

The Solicitors' Journal

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THE SOLICITORS' JOURNAL



VOLUME 104
NUMBER 18

CURRENT TOPICS

Solicitors' Appointments

WE congratulate Mr. L. E. BARKER upon his appointment as a metropolitan magistrate. Mr. Barker, who took his seat as a stipendiary magistrate (at Bow Street) last Monday, is the first solicitor to be appointed a metropolitan magistrate and we believe is the first solicitor in private practice ever to be made a stipendiary magistrate. Born in 1908, the son of a solicitor with an extensive police court practice, Mr. Barker was educated at Westminster School and Trinity College, Cambridge, and was admitted in 1932, since when he has been in private practice. He has specialised in advocacy and magistrates' court work and has been in daily attendance at such courts for many years. It is difficult to think of a better qualified lawyer for the appointment and we rejoice that the LORD CHANCELLOR saw fit in this instance to appoint a member of the solicitors' branch of the profession. We wish Mr. Barker a long and successful magisterial career. Two other recent appointments obtained by solicitors are also noteworthy. Mr. J. F. GARNER, Town Clerk of Andover since 1951, and no stranger to regular readers of our columns, is to take up the post of senior lecturer in law at Birmingham University in September. Mr. P. F. P. HIGGINS, of The Law Society's School of Law, whose wife also is a solicitor, is to become a senior lecturer in law at the University of Tasmania next September. Such movements between practice and theory on the one hand, and between this country and different parts of the Commonwealth on the other, can do nothing but good, and we wish both these gentlemen every happiness and success in their new and important posts.

Publicity for Solicitors

WE applaud the conclusion reached by the council of the British Medical Association that "the policy of anonymity in all circumstances in broadcasting is no longer tenable and there is no objection to the announcement of a doctor's name," provided that the publicity is justifiable in the interests of the public or the medical profession. The operation of the complete ban was ludicrous: one evening a viewer could see, for example, "a consultant psychiatrist" in action; the following morning he well might read in his newspaper a summary of the programme mentioning the name, and perhaps also publishing a picture, of the doctor concerned. The whole question of publicity for professional practitioners needs critical review by their respective associations. We should welcome much greater general publicity for solicitors; claims on the compensation fund and activities of the Disciplinary Committee practically monopolise the

CONTENTS

CURRENT TOPICS:

Solicitors' Appointments—Publicity for Solicitors—The Marriage (Enabling) Act, 1960—An Easter Accident—World Refugee Year

THE CHARITIES BILL—I 337

LATENT DEFECT IN SALE BY SAMPLE 339

LOCAL LAW—III 341

THE AMERICAN SHARE WARRANT 343

LANDLORD AND TENANT NOTEBOOK:

Control: A New Transmission Point 346

COUNTRY PRACTICE:

Underground Movement 347

HERE AND THERE 348

NOTES OF CASES:

Akerbiv v. Booth & Others, Ltd.

(Contract: Exceptions Clause: Tenancy Agreement) 350

Burton v. West Suffolk County Council

(Highway: Inadequate Drainage: Misfeasance or Nonfeasance) 349

Lewis v. Packer

(Moneylender: Mortgage: Contents of Originating Summons) 350

Mascherpa v. Direct, Ltd.

(Practice: Discovery: Whether Exclusion of Discovery on Forfeiture Claim Extends to Counter-Claim) .. 350

Pemberton v. Bright and Devon County Council

(Nuisance: Potential Nuisance Becoming Actual: Liability) 349

R. v. Woodbury Licensing Justices; ex parte Rouse. Same v. Same; ex parte Oldham

(Licensing: Justices: Statutory Period Between Meetings) 351

IN WESTMINSTER AND WHITEHALL 351

REVIEWS 352

POINTS IN PRACTICE 353

CORRESPONDENCE 354

space allocated by the national Press to solicitors. This is largely the collective fault of the profession. Solicitors' fears about being deemed to be advertising are so great that many general achievements by them go unacknowledged in the Press. Even if a name were mentioned in a professional capacity, e.g., before and after a broadcast, or as an author, we doubt whether an undue amount of desirable professional work would result therefrom, although no doubt the solicitor concerned would have to prepare to meet onslaughts from the "lunatic fringe." On balance, the permitting of greater desirable publicity for individual solicitors would help the profession at large, rather than the advertising of a particular brand of, say, vacuum-cleaner increases sales of all types of that commodity. The converse also is true; a general advertisement for, say, beer, helps to boost sales of individual brands. The Law Society is the proper body to organise the general type of advertising for the profession. That approach could be tried first. If, however, it is not practicable quickly to arrange appropriate publicity for the profession as a whole, it might be more beneficial to take a leaf out of the B.M.A.'s book and relax the rules relating to publicity for individual solicitors. In this age of public relations consciousness, the certain way to achieve the worst of every possible world is to do nothing.

The Marriage (Enabling) Act, 1960

THE Deceased Wife's Sister's Marriage Act, 1907, the Deceased Brother's Widow's Marriage Act, 1921, and the Marriage (Prohibited Degrees of Relationship) Act, 1931, are no longer with us. All three statutes were repealed by the Marriage (Enabling) Act, 1960, which received the Royal Assent on 13th April. The new Act proclaims its object as being "to enable a person to marry certain kin of a former spouse." Not only may a man now marry his deceased or divorced wife's sister and a woman her deceased or divorced husband's brother but they may also marry respectively the former wife's aunt or niece or the former husband's uncle or nephew, in all cases whether of the whole or half blood. This Act, however, does not validate a marriage if either party is at the time of the marriage domiciled in a country outside Great Britain and under the law of that country there cannot be a valid marriage between the parties. The Act does not apply to Northern Ireland. So far as this country is concerned it is appropriate that a peer (LORD MANCROFT) should have pricked the (minor) blister of marriage with a divorced wife's sister. We congratulate him on having achieved his object upon his second attempt in contrast to the nineteen occasions necessary to secure the enactment of the Deceased Wife's Sister's Marriage Act.

An Easter Accident

THE many accidents on the roads over the Easter week-end give us all cause for concern but one accident on Easter Monday seems to us to give rise to an interesting, but hypothetical, legal problem. We understand that a man was flung from a "chair-o'-plane" at a fairground at Gillingham and that he landed on the grass about 20 feet away. The unfortunate man was injured but, as far as we are aware, no further injury was suffered as a result of the accident. However, had he caused injury to the person or property of another, could that other found an action upon the rule in *Rylands v. Fletcher*? In other words, can a man be a *Rylands v. Fletcher*

object? As is well known, in *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330, the House of Lords approved the finding of Blackburn, J., that a "person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape," and in *Hale v. Jennings Bros.* [1938] 1 All E.R. 579, the Court of Appeal decided that a chair of a chair-o'-plane, with its occupant, came within this rule. Slessor, L.J., thought that the crucial question was whether or not the apparatus (the chair-o'-plane) was essentially dangerous itself and his lordship thought that this question should be answered in the affirmative. His lordship rejected the contention that the case which was then before him came within the principle that where it can be shown that the actual injury is due to the action of a stranger, and not the thing itself, there may be no liability (see, e.g., *Box v. Jubb* (1879), 4 Ex. D. 76) as the "man whose act of fooling about on the device caused the danger, so far from being a stranger, had been invited to take part in the amusement, and the machine was under the complete control of the defendants," the owners of the chair-o'-plane. However, in *Hale v. Jennings Bros.*, *supra*, a chair broke away from the chair-o'-plane and for this reason this case does not answer the question as to whether a man alone is an object "likely to do mischief" if he escapes. It is true that in *A.-G. v. Corke* [1933] 1 Ch. 89, occupants of caravans were held to come within the rule but this raises a further point as to whether the occupier of a fairground can be said to "collect and keep there" visitors to his fair. In our view, it could be argued that he does and that a man may be a *Rylands v. Fletcher* object, but the position is far from clear.

World Refugee Year

SOON we shall be witnessing the end of an active "year," namely, World Refugee Year. Initiated by the United Kingdom, it must surely rank as one of the finest contributions to humanity in the history of this country. Readers may recall that the PRESIDENT of The Law Society recently expressed the view that the plight of refugees would be appreciated particularly by lawyers, "for the law and the administration of justice through the courts in this country, and indeed in many other countries also, are directed towards the protection of those rights which refugees have so frequently lost—the right to travel and choose one's place of residence, the right to education, the right to work in any profession or trade of one's choice, the right to marry and bring up a family, the right of recourse to courts of law, the right to a reasonable degree of protection from poverty and ill-health and so on." Although 31st May, 1960, is the official termination date of the World Refugee Year, the work of restoring these piteous folk to, among other things, normal decent living conditions will and must continue indefinitely. A task of this magnitude needs financial assistance on such a large scale as to make the obtaining of adequate funds an impracticable proposition over a period of twenty years, let alone one year. There still remains a sum of over £1m. needed to fulfil this country's commitments in Europe, a mere fraction of that which is urgently needed for the rest of the world. With this staggering thought in mind, we would urge members of the profession who wish to support this cause, and have not already done so, to forward their donations to the Appeal Secretary, World Refugee Year, 9 Grosvenor Crescent, London, S.W.1.

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THE CHARITIES BILL—I

WHEN the report of the Committee on the Law and Practice relating to Charitable Trusts (Cmd. 8710—the Nathan Report) was presented to Parliament in December, 1952, it was clear that some years must pass before any major legislation in the field of charity could appear on the statute book. On the one hand, the task of consolidating the existing Charitable Trusts Acts and embracing in a new Act reforms recommended by the committee was a huge one, and, on the other, the Government was faced with legislative demands of obviously greater urgency in other fields. In fact, it was not till July, 1955, that there appeared the White Paper, "Government Policy on Charitable Trusts in England and Wales" (Cmd. 9538), in which the Government accepted the majority of the committee's recommendations, but significantly rejected those which advocated the control of charities by the central or local authorities. In the meantime a short statute, the Charitable Trusts (Validation) Act, 1954, dealing with one particular, and urgent, aspect of charity law had been passed, and subsequently the Recreational Charities Act, 1958, was enacted to deal with doubts which had arisen in a limited field and required speedy resolution. That the introduction in the House of Lords of the long-promised Charities Bill was delayed until February of this year is in all the circumstances pardonable. The Bill has now passed through all its stages in the Lords and been sent to the Commons. There its reception may well be less critical than it was in the Lords and there seems to be good reason to hope that it will become law about Whitsun.

On the whole, the criticisms of the Bill have been reasoned and reasonable. Their lordships have generally been concerned with ensuring that there shall be nothing in the new Act which will occasion additional administrative work for charities as a whole or any particular charities (especially the larger ones with many branches), or permit unjustified interference, by the central authorities or others, with the administration of charities by their respective trustees. On the whole the Bill has been welcomed, and taken by and large it is undoubtedly a masterpiece of draftsmanship, preserving within reasonable bounds, and restating for the most part with admirable clarity, all those parts of the Charitable Trusts Acts, 1853 to 1939, which require to be preserved, and at the same time effecting numerous repeals and introducing new provisions of considerable importance.

Before considering the clauses of the Bill it is desirable to observe its scope by reference to its long title, "An Act to replace with new provisions the Charitable Trusts Acts, 1853 to 1939, and other enactments relating to charities, to repeal the mortmain Acts, to make further provision as to the powers exercisable by or with respect to charities, and for purposes connected therewith." It is a matter of great significance that there is here no attempt or intention to alter the existing case law or to define the meaning of charity in English law. There has never been a definition. The preamble to the Statute of Charitable Uses, 1601, contains examples of purposes which are charitable. Attempts have been made to provide classifications; for example, by Lord Macnaghten in *Income Tax Special Purposes Commissioners v. Pemsel* [1891] A.C. 531. Definition, however, has defied the art of lawyers, and in the passage of the Bill through the Lords attempts to introduce into it a definition clause were strongly, and wisely, resisted by the Lord Chancellor and others, notably Viscount Simonds.

Part I—The central authorities

Clause 1 of the Bill provides that there shall continue to be a body of Charity Commissioners for England and Wales, and their constitution and proceedings are provided for in Sched. I. They have the general function of promoting the effective use of charitable resources, and their general object in the case of any charity (unless it is a matter of altering its purposes) is so to act as best to promote and make effective its work in meeting the needs designated by its trusts; but they have no power to act in the administration of a charity. They are for the future to be appointed by the Home Secretary, who is made responsible to Parliament for them—this is a new provision—and they must report to him on their operations annually.

Clause 2 gives to the Minister of Education functions concurrent with those of the Commissioners, and he is to make his own report to Parliament. While the two existing central authorities are therefore preserved, their jurisdictions are no longer to be mutually exclusive. The cases in which the Commissioners on the one hand and the Minister on the other should act are to be laid down by order in council, but if the one authority acts where under the regulations the other should, what is done will be none the less valid, as the Lord Chancellor made clear in dealing with a point raised by Lord Hawke at the committee stage in the Lords.

Clause 3 provides for an official trustee for charities. Like the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds whom he replaces, he is to be an officer of the Charity Commissioners, and his function to act as trustee for charities is to be performed irrespective of whether the Commissioners or the Minister are exercising jurisdiction.

Part II—Provisions for inquiring into, making known and co-ordinating charitable activities

Clauses 4 and 5, which are new, provide for the registration of charities. The register is to be maintained by the Commissioners—to whom, presumably, the Minister will communicate details of charities in respect of which he acts—and they are to enter therein such particulars as they may from time to time determine. Registration is to be compulsory, except in the case of certain charities referred to in cl. 4, and they may obtain voluntary registration. The Commissioners are to remove from the register any institution which no longer appears to them to be a charity, and also any charity which ceases to exist or does not operate. The duty of applying for registration where it is appropriate, and the provision of all relevant documents and information, is expressly placed upon charity trustees, and they are also required to supply particulars of any changes, in trusts or otherwise, relevant to registration, and to notify the Commissioners if a charity ceases to exist. The register is to be open to public inspection.

Clause 4 was the subject of prolonged discussion in the Lords at the committee stage and again on report, and various noble lords expressed serious concern as to the consequences of registration, some seeing in it apparent disadvantages which would outweigh its advantages. What those advantages will be was made clear by the Lord Chancellor and the Earl of Dundee (Minister without Portfolio). Since inclusion on the register raises a conclusive presumption of charity (cl. 5), the register introduces certainty as to status and thus avoids needless court proceedings and costs. It

helps beneficiaries by providing them with the means of ascertaining their eligibility to benefit. It serves as a safeguard for charitable funds. It is of use to the social worker, who by consulting it can ascertain whether or not benefits are available for those whom he seeks to help, and it enables charities on the one hand and local authorities on the other to see what the other is doing in the field of welfare.

Exempt charities

Some noble lords felt that charities of a national character—the Boy Scouts, for example—would be faced with a multiplicity of registrations because of their numerous branches, and were concerned to have more specific information as to the charities which would not be required to be registered. In this connection it is necessary to examine the categories of charities listed in cl. 4 as exempt from the requirement of registration. They are any charity comprised in Sched. II (referred to as an "exempt charity"), any charity excepted by order or regulations, and any charity not having any permanent endowment nor any income from property amounting to more than £15 a year, nor the use and occupation of any land; nor is any charity required to be registered in respect of any "registered place of worship," being any land or building falling within s. 9 of the Places of Worship Registration Act, 1855, as amended.

Exempt charities are not to be confused with charities excepted by order or regulations. The former are exempt because they are already subject to sufficient statutory control independently of the existing Charitable Trusts Acts; examples are universities and their colleges and the Church Commissioners. Those charities which are excepted will be so excepted because their registration is inappropriate or unnecessary: on the second reading of the Bill the Lord Chancellor referred by way of example to the working funds of churches and the large number of small religious funds which they administer, which are of denominational interest only. In regard to charities having an income from property, the reason why £15 was selected as the lower income limit for purposes of registration was (as the Earl of Dundee explained), first, because that sum represented an accumulation of funds of about £500, which was thought a sufficiently considerable sum to be worth recording, and, secondly, because it was administratively convenient for tax relief purposes, since interest above that figure in a savings bank deposit attracts the attention of the Inland Revenue. The noble earl explained that the requirement of registration where there was use and occupation of land was tied to the recommendations of the Pritchard Committee on the rating of charities and other kindred bodies that machinery should be provided which would enable local authorities to ascertain, for the purpose of rating relief, whether the occupier of land in their area was a charity. The certainty which registration would provide in this respect would be of great advantage both to charities and to local authorities in obviating expensive litigation. Dealing with fears expressed on behalf of organisations, such as the Boy Scouts, which were accustomed to occupy temporary camping sites, the Lord Chancellor pointed out that for rateable occupation there must be something more than mere temporary occupation: "use and occupation" must involve the legal right to exclusive possession and actual occupation under that right.

On the question of multiplicity of registrations where an organisation had many branches, Lord Dundee informed the House that discussions had already been undertaken with a

view to working out flexible and appropriate means of registering: this end would be achieved by administrative regulations on which the charities in question would be consulted. A national association would not be required to register at all levels. When it is considered what a vast number of charities exists, quite apart from any proliferation of branches, it is obvious that, quite apart from the convenience of the charities themselves, the process of registration must be kept within bounds, else the task of the Commissioners may become insuperable.

Objection to registration

While an institution which is registered is conclusively presumed to be a charity so long as it is on the register, cl. 5 provides that any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not one, object to its being entered by the Commissioners in the register, or apply to them for its removal therefrom. An appeal against any decision of the Commissioners to enter or not to enter an institution in the register, or to remove or not to remove it therefrom, lies to the High Court, and in the meantime any relevant entry in the register is held in suspense. On the face of it, cl. 5 opens the way to vexatious proceedings by persons opposed to charities in general or to certain charities in particular, but Lord Dundee, replying to fears expressed in this connection by Lord Silkin, explained that the provision for objection to registration was intended for the protection of people whose own interests might be affected by the question of whether or not the institution in question ought to be classified as a charity: for example, because they were the next of kin of a person who had died leaving his money to a body, the charitable status of which was in doubt. It seems, therefore, that a person could not validly claim to be affected by a registration simply because he was a ratepayer and the result of registration was to secure to the institution in question relief from rates. Provision may be made by regulations as to the manner in which any objection or application is to be made, prosecuted or dealt with, and the Lord Chancellor said that he had it in mind that it should not be beyond the bounds of possibility for the Commissioners, where an application was obviously frivolous, to be able to deal with it simply on the preliminary letter.

Clauses 6 and 7 re-enact the Commissioners' existing powers of inquiry and apply them to all but the exempt charities. They do not call for comment, except to draw attention to the power given by cl. 6 to certain local authorities to contribute to the expenses of the Commissioners in connection with inquiries into local charities in the authority's area. Clause 8 replaces the Commissioners' existing powers to call for statements of account and confers a new power to require accounts to be audited. Clause 9 provides that the Commissioners may furnish the Inland Revenue Commissioners and other Government departments and local authorities with information about institutions which they have treated as established for charitable purposes, or, in order to give or obtain assistance in determining whether an institution ought to be treated as so established, with information as to its purposes and the trusts under which it is established or regulated. Conversely, the Commissioners may be furnished with such information by the authorities referred to.

New powers

Clauses 10, 11 and 12 are new and confer important powers on local authorities (while not giving them power to interfere with the administration of charities) and on charity trustees. Clause 10 empowers the council of a county or of a borough

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mentary to any services provided by county councils, unless it so extends with the consent of the council of that county or the council initiating it provides those services in its area under delegated powers.

Lord Dundee explained in committee that the powers contained in cl. 10 and 11 were given only to county and borough councils because generally speaking there were not enough charities within other local government units to justify either an index or a review. Clause 12, however, in providing for co-operation between charities, and between charities and local authorities, permits any local council and any joint board discharging any functions of such a council to make, with any charity established for purposes similar or complementary to services provided by the council or board, arrangements for co-ordinating the activities of the council or board and those of the charity in the interests of persons who may benefit from those services or from the charity. This reflects recognition of the importance of parish councils in the realm of local charity. Charity trustees are empowered, with a view to promoting or making more effective the work of the charity, to co-operate in reviews of local charities, to make arrangements for the co-ordination of their activities and those of local authorities or other charities, and to publish information of other charities with a view to bringing them to the notice of those for whose benefit they are intended, and may defray any consequential expenses out of the income of the charity.

(To be concluded)

S. G. M.

LATENT DEFECT IN SALE BY SAMPLE

A BOY aged six went into a newsagent's shop which sold children's toys and bought for sixpence a plastic toy catapult, made in Hong Kong. The catapult was manufactured of polystyrene through a process known as injection moulding. Polystyrene is brittle, easily broken, and breaks with a sharp dogtooth fracture. When the boy fired a stone from the catapult, it fractured just below the point where the handle joined the fork. His eye was struck either by the stone or a piece of the broken catapult, and had to be removed by surgical operation. These were the basic facts of *Godley v. Perry, Burton & Sons (Bermondsey), Ltd. (Third Party), Graham (Fourth Party)* [1960] 1 W.L.R. 9; p. 16, *ante*, which raised questions of the application of ss. 14 and 15 of the Sale of Goods Act, 1893, and in particular the liability of the seller for latent defect.

The boy, through his father, sued the shopkeeper, and was awarded £2,500 damages by Edmund Davies, J., in the Queen's Bench Division. The shopkeeper brought in the wholesaler as third party, who likewise brought in the importer as fourth party. It was held that both the wholesaler and the importer were in breach of the implied term in s. 15 (2) (c), and judgment with costs was awarded to the retailer against the wholesaler, and to the wholesaler against the importer.

Child and retailer

As between the child and the retailer, the question was whether the retailer was in breach of s. 14, and in particular whether the child was relying on the "seller's skill or judgment." This is a question of fact in all cases (see Benjamin on Sale, 8th ed., p. 631).

Section 14 provides that there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods sold, except that:—

"(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose."

Edmund Davies, J., adopted the view expressed by Lord Wright in *Grant v. Australian Knitting Mills, Ltd.* [1936] A.C. 85, that where a buyer goes into a shop to make a purchase, it may be in general inferred that the buyer does so in the confidence that the retailer has selected his stock with skill and judgment. Edmund Davies, J., went on to say:—

"When the customer is, as here, of extremely tender years, an inference of reliance on the retailer's skill and judgment readily and properly arises."

This, it is submitted, is an interesting and useful extension of the law, and the point does not seem to have arisen before. While, of course, his lordship spoke only of an inference "readily and properly" arising, it may perhaps be argued in a future case that there is a heavier onus on the shopkeeper to use skill and judgment in selecting stock where the purchaser is likely to be a small child.

Merchantable quality

The plaintiff also claimed that the goods were not of merchantable quality, and the retailer was therefore in breach of s. 14 (2), which provides that where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of

merchantable quality. The point of law argued by the retailer on this aspect of the case was that a sale "by description" would only apply to "unseen" goods, and not to goods displayed or sold over the counter. In *Wren v. Holt* [1903] 1 K.B. 610, Vaughan Williams, J., expressed doubts as to whether s. 14 (2) could apply to goods sold over the counter, but this was disapproved in *Morrelli v. Fitch & Gibbons* [1928] 2 K.B. 636. It was suggested by Farwell, L.J., in *Bristol Tramways and Carriage Co. v. Fiat Motors* [1910] 2 K.B. 831, that the phrase "merchantable quality" was more appropriate to purchases by retailers from wholesalers than to purchases by private buyers, but his lordship went on to say that the phrase clearly covered both cases. In the recent case *Edmund Davies, J.*, took the view that a sale over the counter of an item described as "a catapult" was no less a sale by description than one concluded by placing an order on the strength of a catalogue.

Retailer and wholesaler

The other aspect of the case concerned the reliefs sought by the retailer from the wholesaler, and by him in turn from the importer. These claims were based on s. 15 (2) (c), which provides that in the case of a sale by sample:—

"There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample."

It was clear enough from the evidence that there had been a sale by sample and that the catapult was defective, and the only question was whether the defect could have been discovered on a reasonable examination. Representatives of the retailer and wholesaler had in fact tested the catapult by pulling back the elastic, without any alarming results.

Counsel for the importers appears to have demonstrated to the court the inherent fragility of the catapult by squeezing the prongs together, and also by holding it down with one foot and pulling the elastic until it broke. But Edmund Davies, J., was not impressed and said:—

"The potential customer might have done any of these things. He might also, I suppose, have tried biting the catapult, or hitting it with a hammer, or applying a lighted match to ensure its non-inflammability, experiments which, with all respect, are but slightly more bizarre than those suggested by counsel, but . . . none of those tests are called for by a process of 'reasonable examination' . . . Not extreme ingenuity, but reasonableness, is the statutory yardstick."

Sales by sample

There is no doubt that, in the recent case, the contracts concluded between the retailer and the wholesaler, and between the wholesaler and the importer, were sales by sample. When the wholesaler had placed the order with the importer's traveller, the traveller had produced a sample catapult which was inspected by the wholesaler and his manager. They tested the pull back on the sample catapult because, apparently, there is a rule in the toy trade that the elastic of a catapult ought not to be capable of being pulled back more than 2½ feet because of the danger of serious damage being inflicted on persons or property. The retailer's wife had similarly tested the pull back of the catapult when she was shown the sample catapult by the wholesaler's traveller. In both cases, a reasonable inspection had been made by the buyer, and therefore the implied condition of merchantable quality under s. 15 (2) (c) took effect.

It is not always so easy, however, to establish that the contract of sale has been made by sample. It may be necessary to bring evidence of trade custom to show that the

sale was by sample. Again, merely to exhibit a sample during negotiation for a contract of sale does not necessarily make it a sale by sample. In a case where the buyer stipulated that samples of the goods offered for sale should be delivered for approval, and this was not done, it was held that no firm contract was ever concluded between the parties—*Societe Capa v. Acatos & Co.* [1953] 2 Lloyd's Rep. 185.

The proper function of a sample was defined by Lord Macnaghten in *Drummond & Sons v. E. H. Van Ingen & Co.* (1887), 12 App. Cas. 284, where he said:—

"The office of a sample is to present to the eye the real meaning and intention of the parties with regard to the subject-matter of the contract which, owing to the imperfection of language, it may be difficult or impossible to express in words. The sample speaks for itself. But it cannot be treated as saying more than such a sample would tell a merchant of the class to which the buyer belongs, using due care and diligence, and appealing to it in the ordinary way and with the knowledge possessed by merchants of that class at the time . . . Some confidence there must be between the merchant and the manufacturer. In matters exclusively within the province of the manufacturer, the merchant relies on the manufacturer's skill."

In the case under review, Edmund Davies, J., said that although *Drummond v. E. H. Van Ingen & Co.* had been decided before the passing of the 1893 Act, it was still authoritative. He quoted the above words with approval and said that he thought they could apply *mutatis mutandis* not only to deals which involved the manufacturer, but between one wholesaler and another.

Seller's responsibility

At one time, prior to the passing of the Sale of Goods Act, it was thought that a seller who was not the manufacturer, but merely the merchant, was not responsible for a latent defect which examination of the sample failed to disclose (so decided in *Parkinson v. Lee* (1802), 2 East. 314, but later disapproved). The Act made it clear, however, that there was to be no distinction drawn between the manufacturer and any other supplier.

The obligation of the buyer to make a reasonable examination of the goods or sample before he can claim the benefit of the implied conditions given under the Act may be compared with the duty of the employer to take reasonable care (by inspection and examination or otherwise) to provide his workmen with safe tools. The law makes a distinction between the duty of the seller who retails goods supplied by a manufacturer which have a latent defect not revealed by reasonable inspection, and the duty of the employer who purchases a similarly defective tool from a manufacturer and provides it for his workmen to use. We may take as an example the case of a steel hammer which has a latent flaw caused by careless tempering in the manufacture. A customer buys the hammer from the shopkeeper and is injured while using the hammer when a piece of steel flies off and strikes him in the eye. On the authority of *Godley v. Perry*, the shopkeeper is primarily liable in damages, though he may get indemnity from his supplier or manufacturer. But the same result would not obtain in the case of the employer, according to the law as recently laid down in *Davie v. New Merton Board Mills* [1959] A.C. 604. If the employer takes reasonable care to see that the tool is safe (i.e., by buying from a reputable manufacturer), he is not liable if an employee is subsequently injured because of a latent defect in the tool. The employee must go directly to the manufacturer and sue him.

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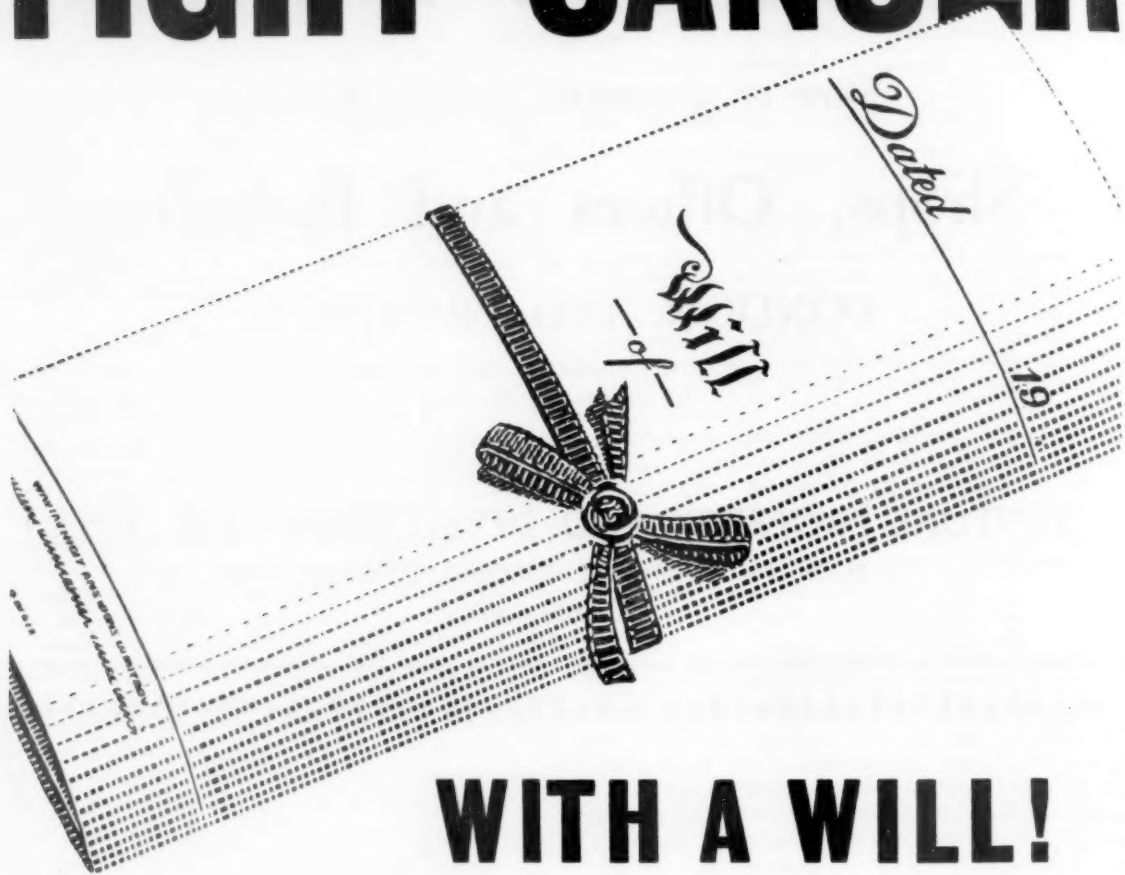
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Strange distinction

It is certainly rather strange that there should be this distinction between the law relating to sale of goods and the law of master and servant. Why should the shopkeeper be liable for a latent defect, and the employer not? Which rule is the more just? These questions cannot be readily answered. Perhaps it is dangerous to draw too close a

parallel between a duty under statute and a duty at common law. In general, however, it would seem fairer that the injured person should be able to turn for damages to the party who was nearest him in the chain of liability, rather than be obliged to seek out the manufacturer, who may be either unknown to the injured person or in some distant jurisdiction like Hong Kong.

N. G.

LOCAL LAW—III

WHILE it may be that the draftsman of a private Bill has not the time or resources of the Government draftsman, there would seem, if one can judge from the infrequency of any adverse comment by the courts, to be little wrong with his products. Indeed, they seem to compare favourably in this respect with the results of public Bills, though admittedly private Acts may not have the same intense legal searchlights thrust on their contents that the public Acts suffer. It must be remembered, however, that the parliamentary agents receive their instructions through the legal advisers of the local authorities, who are the people who have to advocate the provisions on the ground and in the magistrates' courts and who have, therefore, the experience to guard against any defects. Furthermore, clauses in private Acts are continually being improved. In 1957, Lord Goddard, then L.C.J., in reference to the enforcement provisions of the Town and Country Planning Act, 1947, referred to "this somewhat obscure Act . . . on which there are authorities which it is not easy to reconcile one with another." These provisions are only just about to be substantially amended despite constant criticism. Had they appeared in a private Act, it is highly probable that the promoters would have sought their amendment reasonably soon, and certainly the promoters of the next Bill to include such provisions would have ensured that their Bill was not defective.

To take a small example of slight variations, the Gloucestershire Act, the Buckinghamshire Act and the Highways Act, 1959, all contain provisions based on a model clause, to enable the relevant authority to require in certain circumstances the construction of carriage crossings from adjoining premises over grass verges or footways of public highways. In the Gloucestershire Act the power applies where the owner or occupier of the premises habitually uses or permits any grass verge or paved or kerbed footway in a public street to be used as a crossing for vehicles to and from the premises; in the Buckinghamshire Act the power applies where the owner or occupier or any person residing in the premises so uses the grass verge or paved or kerbed footway, thus avoiding the possibly difficult question of "permission"; unfortunately the 1959 Act does not include this desirable modification, nor indeed does it apply to a paved as distinct from a kerbed footway, though it is superior in applying to any public highway and not just to a highway which is a street. It is very much to be hoped that when "clauses" Bills are introduced from time to time by governments they will be up to date and take the best draftsmanship from the most recent private Acts, if necessary improving upon it.

To take another example of variations in sections based originally on the same model clause, the three Acts mentioned each contain a section whereby public highways may be stopped up or diverted by order of a magistrates' court on application being made by the relevant authority. In the

Gloucestershire Act the section does not apply to trunk roads, public footpaths or bridleways; in the Buckinghamshire Act it does not apply to trunk roads; and in the 1959 Act it does not apply to trunk roads or special roads; in the Gloucestershire Act notice of the proposed application has to be advertised for four successive weeks in the local Press, in the Buckinghamshire Act it has to be so advertised and also once in the *London Gazette*, while in the 1959 Act it has to be advertised in two successive weeks in the *London Gazette* and the local Press; in the 1959 Act where the highway is in a rural district and is not a classified road the rural district council or the parish council may veto the application absolutely, under the other two Acts they have no veto but may put their views to the magistrates like any other objectors; under the Gloucestershire and Buckinghamshire Acts the application is made in every case by the highway authority, under the 1959 Act where the highway is in a borough or urban district the application has to be made by the borough or urban district council whether or not they are the highway authority. Admittedly all these variations in provisions which start from the same source involve matters of policy rather than drafting, but the writer feels that by and large the Buckinghamshire section is the best.

The 1959 Act, in common with other public general Acts, such as the Public Health Acts, which partially cover the same field as private Acts, contains a section (s. 288) providing that where a local Act is in force and "contains provisions appearing to the Minister of Housing and Local Government either to be inconsistent with any of the provisions of this Act, or to be redundant having regard to the provisions of this Act, the said Minister on the application of the council by whom the said Bill was promoted may by order make such alterations, whether by amendment or repeal, in the local Act as appear to him to be necessary for the purpose of bringing its provisions into conformity with the provisions of this Act, or for the purpose of removing redundant provisions, as the case may be."

Finding the law

This brings one to the problem of finding out what local Acts are in force in any particular place.

There is a published consolidated Index to the Local and Personal Acts and Special Orders from 1801 to 1947 and for subsequent years an annual index, but this is insufficient for the purpose of finding out whether some sections have been brought into force and what repeals and amendments (if any) have been made. Some provisions in local Acts require adoption by resolution or otherwise before they come into force, and Acts of one authority may be repealed or amended by later Acts of the same authority or by Acts of another authority; thus the Buckinghamshire Act of 1957, referred to earlier, repeals six sections of the Slough Corporation Act, 1949, and nine sections of the Eton Rural District Council Act, 1950;

but, worse than this, sections of local Acts may be repealed, as indicated above, not by another Act but simply by order, and there is no public index of such orders. It is of no use asking the Ministry of Housing and Local Government, for their witnesses before the Joint Committee stated that they did not know the local law at any rate where there were a lot of local Acts, and that they would have to refer the inquirer to the town clerk. Further, even when the existence of local Acts has been ascertained, it may well be found that the Acts are out of print.

It seems undoubted that the proper person of whom inquiries should be made about local law, whether it be in the form of a byelaw or private Act, is the town clerk in county boroughs, and the clerk of the county council and the clerk of the appropriate county district council in administrative counties. In Middlesex and Birmingham, where many local Acts have been obtained, the law has been consolidated in later Acts, while in some at least of the other towns who have been active in this field, guides to the local law in force have been prepared. But the fact remains that knowledge of local law is not readily available, particularly to the reader concerned with business outside the area in which he practices.

Can the volume of local law be reduced?

Is there any solution to this problem?

There may be some reduction in the flow of new local Acts following the Joint Committee's report, though local legislation clearly had their blessing. Would it be reasonable to impose a life on all future local Acts of, say, ten years to ensure that a large mass of redundant and semi-redundant legislation did not remain on the statute book? In the writer's view this is a solution which would hardly commend itself to the local authorities or to Parliament, and might produce more difficulties than it solved.

When the new public general "clauses" Acts come into operation should they contain positive blanket repeals of existing local legislation on the same subjects, or simply contain sections for repeal or amendment by order on application as does the 1959 Act? Applications by authorities under the latter type of section are perhaps hardly likely; so far as the provisions of their Acts simply become redundant it is easier to let them lie on the table; so far as they are better than the general Act, as may perhaps often be the case, the authority will wish to retain them. A blanket repeal on the other hand may be a dangerous thing since it may be difficult to decide whether any particular provision is caught by the repeal. For example, s. 26 of the Town and Country Planning Act, 1959, provides that, where any enactment confers power upon a local authority to dispose of land subject to a provision, "in whatever terms the provision is expressed", that the power is not to be exercised without the consent of a Minister, the enactment shall have effect as if it conferred the power free of such provision. The Green Belt (London and Home Counties) Act, 1938, contains a power to authorities to dispose of green belt land vested in them under that Act subject to their obtaining the consent of the Minister of Housing and Local Government after public advertisement and of every other authority who may have contributed under the Act to

the original purchase, and if any contributing authority refuses to consent the Minister is to decide the issue. One opinion is that the words of the 1959 Act, wide as they are, do not dispense with the Minister's consent under the 1938 Act. It is certainly undesirable that they should do so. The object of the 1959 Act was to relax central government control of local authorities, a wholly laudable ideal, but the object of the 1938 Act in requiring the Minister's consent to be obtained was to protect the public from the easy and secret disposal of land which had been acquired for the protection of amenities as part of the Green Belt. Further, if the Minister's consent is dispensed with, what is to happen if a contributing local authority refuses its consent?

It might be better, therefore, if authorities were required by the public Act to forward schedules of all private Act sections in force in their area on the same subjects to the Minister so that a separate repealing and amending Act could be passed after the sections had been carefully examined, or if the Minister obtained such a schedule at an early stage in the preparation of his Bill and then provided in it for specific repeals and amendments. Perhaps the most likely future trend will be the enactment of sections in public Acts authorising the appropriate Minister to repeal or amend local legislation by order, whether or not the original promoters apply for an order, as, e.g., in the Caravan Sites and Control of Development Bill now before Parliament which we considered in an earlier article (p. 239).

However, there would in any case still remain a large bulk of private legislation. The Ministry of Housing and Local Government seem to regard any consolidation of this as beyond the realm of practical possibility. Perhaps the most practical solution is that suggested by counsel to the Lord Chairman in his evidence before the Joint Committee when he said: "I suspect that a lot of the local statute book is as dead as mutton, and that you might possibly justify some very draconian measure as to some of these Acts passed before 1937, when the Public Health Act, 1936, came into force, to the effect that they would cease to have effect in, say, five years time, and leave it to local authorities, if they wanted to save anything from that wreck, to do it by either the promotion of a Bill or some sort of Ministerial Order."

If an operation of this kind were to take place at, say, twenty-year intervals phased over different areas of the country so as to avoid congestion of new legislation, and a similar process were applied to local byelaws, there might result a welcome consolidation, and reduction in the amount, of local law, with increased publicity for what was left. Particularly would this reduction be achieved if successive governments, taking advantage of the initiative shown by local authorities, passed suitable public general clauses Acts at regular intervals adopting the successful experiments of the authorities in their private Acts. Yet such a method of reduction would produce difficulties in the case of such an Act as that of 1938 just mentioned. Perhaps after all there may be something to be said for letting the accumulation of local law continue and leaving the earlier parts to slumber on peacefully in an old age of redundancy!

(Concluded)

R. N. D. H.

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THE AMERICAN SHARE WARRANT

IN the course of practice most solicitors at some time encounter the American share warrant, or the share certificate in American form as it is sometimes called. The encounter is usually in connection with a probate matter, but often it occurs when the practitioner is asked to draw a trust deed or to advise on liability to taxation; it rarely occurs when the shares are being sold, for our brethren of the stock exchanges very ably deal with such transactions.

An American share warrant consists of a share certificate in respect of shares in an American company coupled with a form of transfer of the shares endorsed on its reverse side. The share certificate is in the same form as that of an English company, save that we usually find that a bank or firm of stockbrokers is stated to be the registered holder of the shares, and not our client. The transfer form, too, is not dissimilar from an English share transfer, but when it comes to us we usually find that it has been executed by the registered holder named in the certificate, but that the name of the transferee and the consideration for the transfer have been left blank. In reality the American share warrant is a form of security midway between our registered share and our share warrant to bearer. It might well be described as a share warrant to the order of the registered holder. While he holds it without having executed the endorsed transfer form in blank, he alone has a title to it, and no person can acquire a title to it merely by obtaining the certificate; but when he has executed the transfer form in blank, the warrant becomes a share warrant to bearer, although it may be converted into a certificate to order again by the name of a transferee being inserted in the blank transfer.

The purpose of this article is to examine how far the rules of American law relating to the transfer and negotiability of American share warrants apply to transactions in this country, and also to deal with certain incidental topics, such as the devolution of title to such warrants on death or bankruptcy in this country. The relevant American law is that of the state where the company concerned is incorporated, but as all the states where sizeable companies are likely to seek incorporation have now adopted the Uniform Stock Transfer Act drafted in 1909, it will be assumed that that Act governs the transaction from the American side.

Transferability

By the Uniform Stock Transfer Act, s.1, shares represented by a share warrant can be transferred only by delivery of the share certificate to the transferee together with either (a) a separate share transfer form executed by the registered holder in blank or in favour of the transferee by name, or (b) an endorsed share transfer form so executed, or simply with the holder's signature endorsed on the share certificate like the endorsement by the payee of a cheque to his order. By s. 9, if the holder simply delivers his certificate to the intended transferee, he comes under an obligation to endorse the certificate with a signed transfer, and this obligation is specifically enforceable whether the transferee gave value for the transfer or not. On the other hand, by s. 10 the delivery of a transfer form duly executed but unaccompanied by the share certificate merely takes effect as a promise by the registered holder to transfer the shares in the proper way, and such a promise is unenforceable unless the transferee gave consideration. By s. 4, if the registered holder executes two transfers of the same shares, the transferee

who also obtains the share certificate will acquire the title thereto, except where he is the later transferee and either gave no consideration for his transfer, or had notice of the earlier transfer when he took. By American law these rules apply whether the transfer in question is effected within or outside the United States, and whether or not the law of the country where the transfer is executed recognizes a transfer in the form sanctioned by s. 1 as effectual (*Morson v. Second National Bank* (1940), 306 Mass. 588).

The English rules of conflict of laws determine the validity of a transfer of shares both as to essentials (e.g., capacity of the transferor) and as to formalities by whichever country's laws the parties intended to govern the transaction, or, possibly, by the laws of the country where the transfer is executed (Dicey's Conflict of Laws, 7th ed., pp. 554-557). We are only concerned with transfers executed in England, and so English law will inevitably govern. By English law a transfer of an American share warrant in either of the forms sanctioned by s. 1 of the Uniform Stock Transfer Act would be effective to pass the equitable title to the shares; this would be so even if the registered holder merely endorsed his signature on the share certificate if he did so with an intention to transfer (*Inland Revenue Commissioners v. Electric and Musical Industries, Ltd.* [1949] 1 All E.R. 120, 126). The legal title would not pass merely by the execution of the transfer and delivery of the share certificate, however (*Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20, 28), although it would do so in American law. Even so, English law recognises that questions of priority between competing claimants to the same shares are determined by the law of the country where the company is incorporated (Dicey, op. cit., pp. 557-558), so that in the event of a registered holder executing two transfers of his shares, the claims of the transferees would be governed by s. 4 of the Uniform Act, and not by the English rule that the transferee who registers his transfer first, and so acquires the legal title, usually has priority. On the other hand, the English rules as to the validity of gifts or gratuitous trusts of shares would undoubtedly govern to the exclusion of ss. 9 and 10 of the Uniform Act. The mere delivery of the share certificate without a transfer or endorsement would not impose any obligation on the donor to complete the title of the donee (*Moore v. Moore* (1874), L.R. 18 Eq. 474), whilst the execution and delivery of a share transfer form unaccompanied by the share certificate would seem sufficient to pass the equitable title to the donee, for our law does not regard the delivery of the share certificate as essential to complete a transferee's title (*Guy v. Waterlow Bros. and Layton, Ltd.* (1909), 25 T.L.R. 515).

Negotiability

The effect of ss. 5 to 8 of the Uniform Stock Transfer Act is to make a share certificate accompanied by an endorsed or separate transfer executed with the name of the transferee left blank a negotiable instrument. By s. 5, if a share certificate and transfer are delivered to a transferee by a person having no authority from the owner of the shares to do so (e.g., a thief), the transferee acquires a good title to the shares. By s. 6 an endorsed transfer executed by the owner of the shares is effectual even though procured by fraud, duress or mistake, or even if the owner has purported to revoke the transfer intended to be effected thereby, or even though the owner has died or become incapacitated after

endorsing the transfer, or even though the owner has received no consideration for the transfer. In all such cases under s. 5 or s. 6, however (except where the owner died or became incapacitated or purported to revoke the transfer after the share certificate and endorsed transfer had been delivered to the transferee, whether for value or by way of gift), the owner may sue the person who at present holds the share certificate and transfer for their return, but the present holder's title cannot be thus destroyed if he or any person through whom he acquired the documents took them for value in good faith and without notice of any defect on the title of his immediate transferor (s. 7). Similarly, even if the owner obtains judgment for the recovery of the share certificate and transfer, but the defendant transfers the shares for value to a person who takes in good faith before the judgment is executed, the transferee's title is good against the owner (s. 8). Wide as is the protection given to an innocent transferee for value, however, the Act does not protect him if the share warrant is not in proper form when delivered to him (e.g., if the owner had endorsed a transfer to another named person) (*Sun Insurance Co. v. Leshefsky* (1943), 31 F. Supp. 952), nor if a thief steals an unendorsed share warrant and forges the registered holder's signature on the transfer form (*National Surety Co. v. Indemnity Insurance Co.* (1933), 261 N.Y. Supp. 605), nor, *a fortiori*, if the share certificate is itself a forgery (*Citizens' and Southern National Bank v. Trust Co. of Georgia* (1935), 50 Ga. App. 681). But the transfer form need not be in blank when received by the innocent transferee, so that if a thief steals a share warrant which the registered holder has endorsed in blank, and then sells it to an innocent purchaser whose name the thief inserts in the transfer form, the purchaser acquires a good title.

English law recognises a document as a negotiable instrument only if it is treated as such by the mercantile custom of this country, the law or custom of its country of origin being irrelevant for the purpose (*Picker v. London and County Banking Co.* (1887), 18 Q.B.D. 515). There is no evidence that stockbrokers and jobbers in this country have come to treat American share warrants as negotiable, and, indeed, the Rules of the London Stock Exchange, r. 134 (2), carefully segregate them from other instruments which are recognised as negotiable, and they are merely included in the category of securities passing by delivery. Consequently, until such a custom is established, the legal effect in this country of delivering an American share warrant endorsed in blank or to a named person will merely be the same as delivering an English share certificate accompanied by a similar transfer form (*Colonial Bank v. Cady and Williams* (1890), 15 App. Cas. 267). The transferee will get no better title than the person who delivers to him has, so that if the share warrant endorsed in blank has been stolen, the transferee will get no title at all. On the other hand, if the owner of the shares is estopped from denying the validity of the transfer, the transferee will obtain a good title. This will occur if the owner delivered the share warrant endorsed in blank to an agent with a limited authority to deal with it, and the agent transfers the shares in excess of his authority to an innocent transferee, but the transferee will only acquire a title if his name is filled in on the transfer form as transferee before the share warrant is delivered to him (*Fox v. Martin* (1895), 64 L.J. Ch. 473), or if the owner authorised the agent to mortgage the shares to raise a limited sum, and he delivers the share warrant to the transferee with the transfer form still in blank as security for a larger sum (*Fry v. Smellie* [1912] 3 K.B. 282).

Marking names and exchange control

American share warrants held in this country are invariably registered in the name of a bank or firm of stockbrokers. Such nominees are known as "marking names," and they are "good" marking names if they appear in the list printed at the front of the Stock Exchange Year Book. The importance of having the shares registered in a good marking name is not only to ensure the reliability of the nominee, but also because if the shares are sold on the London Stock Exchange, the purchaser is not bound to complete his purchase unless they are so registered (Rules of the London Stock Exchange, r. 135 (3)).

Every American share warrant must be deposited with an authorised depositary (such as a bank or solicitor) unless it is registered on a register kept in the United Kingdom and no transfer of it can be registered without an entry being made in such a United Kingdom register (Exchange Control Act, 1947, s. 15). Transfers of shares of many American companies can be registered either on a register kept in the United Kingdom or on a register kept in the United States at the option of the holder; the warrants in respect of such shares must, of course, be deposited under s. 15. When a share warrant has been deposited, the authorised depositary cannot recognise any person other than the owner at the date of the deposit as entitled to the shares unless the Treasury consents, or unless a declaration is made by an authorised depositary (not necessarily the one who holds the warrant) that the shares represented by the warrant have been continuously owned by a resident of the United Kingdom since 2nd September, 1939; furthermore, the new owner of the shares must, unless the Treasury consents, be resident in the sterling area (Exchange Control Act, 1947, ss. 9 (1) and 15 (5)). General consent has been given by the Treasury to sales of American share warrants between residents of the United Kingdom in the normal course of dealings on a United Kingdom Stock Exchange, however, and so in that case the authorised depositary may recognise the title of the purchaser without a declaration of ownership being made.

The marking name, as registered holder of the shares represented by the warrant, exercises the voting rights at meetings of the company, but by both English and American law it must obey the directions of the beneficial owner of the shares (*Re Whichelow; Bradshaw v. Orpen* [1954] 1 W.L.R. 5; *Re Giant Portland Cement Co.* (1941), 26 Del. Ch. 32). Similarly, the marking name receives all dividends and repayments of capital from the company, but it must, of course, account to the beneficial owner of the shares. Since the share warrant is not a negotiable instrument by our law, the marking name must trace the true owner at its peril for this purpose, and so if it pays a dividend or a repayment of capital to a person who has no title to the share warrant in his possession, it will have to pay the dividend or capital a second time to the true owner. If the share warrant has to be deposited with an authorised depositary, the marking name must pay dividends and repayments of capital to him, and he may not part with such payments to the beneficial owner of the shares unless the Treasury consents, or unless the prescribed declaration of United Kingdom ownership mentioned above is made (Exchange Control Act, 1947, ss. 15 (4) and 16 (3), and Bank of England Notice E.C. Securities 9, Pt. II).

Death and bankruptcy

A grant of probate or letters of administration in respect of the estate of a person who died domiciled in England

extends to all his personal estate situate in Great Britain. Whether the grant extends to American share warrants held by the deceased in this country, therefore, depends on whether our law regards the shares represented by such warrants as situate here. Where shares are recorded on a register kept by the company, they are treated as being situate where the register is kept (*Erie Beach Co. v. A.-G. for Ontario* [1930] A.C. 161), but if American shares can be transferred on any of two or more registers at the option of the shareholder (e.g., on a register kept in the United States or on a register kept in England), the shares will be treated as situate where they are most likely to be transferred. Consequently if the deceased was domiciled in England and the share warrant is here and the shares can be transferred on a register kept in England, the shares will be situate in England, and the English grant of representation will extend to them. This is so whether the share warrants have been endorsed with a blank transfer by the deceased (*R. v. Williams* [1942] A.C. 541) or not (*Treasurer of Ontario v. Aberdeen* [1947] A.C. 24). Moreover, it seems that if the deceased was domiciled in England and the share warrant is here and has been endorsed by the deceased with a blank transfer, the shares will be treated as situate here even if they can only be registered on a register kept in the United States (*Stern v. R.* [1896] 1 Q.B. 211). This decision is perhaps supportable on the ground that by American law the endorsed share warrant is a negotiable instrument, although not recognised as such by our law. The situation of American shares for the purpose of death duties is governed by the same rules as apply to grants of representation.

If a person is adjudicated bankrupt in this country, all his property wherever situate vests in his trustee in bankruptcy (Bankruptcy Act, 1914, s. 38 (a), and *Re Anderson* [1911] 1 K.B. 896), but if property is situate abroad and the local law does not recognise the trustee's title, the court may order the bankrupt to do whatever is necessary to perfect the trustee's title (Bankruptcy Act, 1914, s. 22 (2)). Consequently, the trustee should encounter no legal difficulties in obtaining a title to the bankrupt's American share warrants.

American law recognises the title of a person to share warrants acquired by transmission under a foreign system of law, but only if the warrant is physically present in the foreign country and is in the possession of the person who claims by transmission (*Direction der Disconto-Gesellschaft v. United States Steel Corpn.* (1925), 267 U.S. 22). If the personal representatives of a deceased shareholder have a title to the shares by English law under their English grant of representation, and they also possess the warrant, then they will be the legal owners of the shares by American law. But if they have no title to the shares under the English

grant, they must extract a grant of representation in the state where the American company is incorporated. For the reasons already given, an English trustee in bankruptcy should have no difficulty in acquiring a title to American shares by American law.

Where an authorised depositary holds a share warrant on behalf of an owner who dies or becomes bankrupt, the depositary may continue to hold the warrant on behalf of his personal representatives or trustee in bankruptcy in whom the shares have vested without the need for Treasury consent (Exchange Control Act, 1947, s. 16 (2)).

Execution

By American common law execution was levied on the shares of a judgment debtor by a court of the state where the company was incorporated issuing a writ of attachment to the company. Such a writ had the same effect as a charging order and notice in lieu of distringas issued under our law. By the Uniform Stock Transfer Act, s. 13, however, no execution against shares is effective unless the share warrant has been seized under an order of the court or has been surrendered to the company, or unless the court has enjoined the judgment debtor from transferring it. Many states have excluded this provision when adopting the Uniform Act, however, and execution on shares in companies incorporated under their laws is still levied by the writ of attachment. Such states include California, Colorado, Florida, Georgia, Missouri and Montana.

Where a company is incorporated in a state where s. 13 of the Uniform Act applies, the shares are treated by American law as being situate for the purpose of levying execution where the share warrant is to be found (*Mills v. Jacobs* (1938), 333 Pa. 231). Consequently, if the warrant is in England, an execution ordered by an English court will be recognised by American law. It is not possible to levy such an execution in England by obtaining a charging order followed by an order for sale, because charging orders can only be made in respect of the shares of companies incorporated in England (Judgments Act, 1838, s. 14). But the court may appoint a receiver by way of equitable execution with power to seize the share warrant, and may enjoin the judgment debtor from transferring the shares.

Where the state where the company is incorporated has contracted out of s. 13 of the Uniform Act, the only form of execution which it will recognise is a writ of attachment issued to the company by its own courts (*Mills v. Jacobs, supra*). But our courts might still appoint a receiver of the share warrant so as to prevent the judgment debtor from transferring it, and so as to aid the judgment creditor with his application for a writ of attachment in the United States.

R. R. PENNINGTON.

COLONIAL LEGAL APPOINTMENTS

The following appointments and promotions are announced in the Colonial Legal Service: Mr. H. F. HAMIL, Deputy Registrar, Kenya, to be Deputy Registrar General, Kenya; Mr. S. B. JONES, Senior Police Magistrate, Sierra Leone, to be Puisne Judge, Sierra Leone; Mr. R. B. LLOYD to be Legal and Administrative Assistant, Malta; Mr. H. G. MARTIN, Chief Lands Officer, Northern Rhodesia, to be Registrar General, Nyasaland; Mr. R. S. MILLER, Senior Magistrate, British Guiana, to be Puisne Judge, British Guiana; Mr. I. E. MORGAN, Registrar of Titles, Kenya, to be Principal Registrar of Titles, Kenya; Mr. R. NEENINJUN, Attorney-General, Mauritius, to be Chief Justice, Mauritius; and Mr. J. A. H. TILLEY, Assistant Land Officer, Tanganyika, to be Legal Assistant, Hong Kong.

Honours and Appointments

Mr. STANLEY WILLIAM RALPH CHRISTMAS, solicitor, of South Shields, has been appointed Deputy Town Clerk of Mansfield, Nottinghamshire.

Mr. JOHN RITCHIE, M.B.E., has been appointed a Master of the Supreme Court (Queen's Bench Division) with effect from 25th April, 1960.

Mr. DONALD ALFRED WILLIAMS has been appointed an Assistant Official Receiver to act as assistant to any Official Receiver appointed for the purposes of the Companies Act, 1948, and attached to the High Court. The appointment takes effect from 2nd May, 1960.

Landlord and Tenant Notebook

CONTROL: A NEW TRANSMISSION POINT

THE capacity of rent control legislation for producing new problems is not exhausted. This was demonstrated by a recent decision (*Gooda v. Sheldrake*) of Judge Carey Evans made at Great Yarmouth County Court on 8th January, 1960. A reader has been good enough to send us a copy of the pleadings and judgment.

On the day war broke out, as a well-known comedian used to put it, a house in Great Yarmouth was occupied by three generations of a certain family, the grandfather being the tenant and having been such for at least ten years. Owing to the said outbreak, they took furnished premises at an inland village, Dereham, but the grandfather retained the tenancy of the house on the coast, paid the rent and kept the furniture there, and from time to time some member of the family would go and visit that house.

Predeceased by his wife, the tenant died in 1944. When hostilities ceased in the summer of 1945 a married daughter, one of the family who had been sharing the inland residence with the tenant, returned with her daughter to the Great Yarmouth dwelling. Its rent had been paid by her since her father's death; whether the landlord knew of that event at the time was not brought out, and it was not till June, 1949, that her name was entered in the rent book; but it was established that she had paid the rent from the date of her father's death onwards and done so until her death in 1959. It was also proved that rent had been increased, from 7s. to 10s. a week, in May, 1947. (It was also shown that a notice of increase, presumably a "Form A" notice, had been served on her some ten days after the coming into force of the Rent Act, 1957.)

By that time the grand-daughter had married. The landlord had died, and his executors now sought possession against her and her husband. The essential question was whether the original tenant's daughter had held as a contractual tenant or as a statutory tenant, there being no second transmission on death (*Pain v. Cobb* (1931), 146 L.T. 13; *Summers v. Donohue* [1945] K.B. 376 (C.A.)).

"Residing with"

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (g), as amended by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 13, and the Increase of Rent and Mortgage Interest (Restrictions) Act, 1935, s. 1, provides that the expression "tenant" includes, where a tenant leaves no widow, such member of the tenant's family *residing with* the tenant for not less than six months immediately before the death as may be decided in default of agreement by the county court. It was contended that the original tenant's daughter had occupied by virtue of this provision, she having so resided with her father.

This raised the novel point whether such residence must be residence in the protected premises. So far, indeed there is plenty of authority showing that what matters is that the claimant's home should have been that of the deceased; a sub-tenant of part cannot qualify (*Edmunds v. Jones* (1952), 213 L.T. 62 (C.A.)), but absence during part or even all of the six months will not disqualify, as in cases mentioned by Somervell, and Denning, L.J.J., in their judgments in *Middleton v. Bull* [1951] 2 T.L.R. 1010 (C.A.): absence on military service, a sailor ~~so~~ away on a voyage, a daughter training

as a probationer nurse or away on holiday. In the case before it, that court distinguished such cases, upholding a decision that a daughter employed elsewhere as a resident housekeeper, who visited her mother's flat several times a week during day-time (and had lived there for two months only before the mother's death), was not statutorily entitled to a tenancy. These cases would not have been directly in point in *Gooda v. Sheldrake*, but an observation made by Denning, L.J., in the course of his judgment could have afforded support for the defendant if she had established that her mother had been a contractual tenant: "Conversely, even the mother need not necessarily be at home for all the time. If she were away ill in hospital for the last six months before her death, a son or daughter might still be held to be 'residing with' her." The county court judge took the view that temporary absence occasioned by wartime conditions did not prevent the paragraph from applying. This view is, of course, consistent with the general principle that the object of the Acts is to protect people from being turned out of their homes (see *Curl v. Angelo* [1948] 2 All E.R. 189 (C.A.)).

Up to a point, the facts were similar to those of some of the "two homes" cases; the circumstance that the furniture remained at the Great Yarmouth house is reminiscent of *Granby Hotel, Ltd. v. Cumbers* (1952), 159 E.G. 164 (C.A.), but in that case there was occasional week-end occupation; and *Beck v. Scholz* [1953] 1 Q.B. 570, has shown that even occupation will not necessarily make a dwelling-house a second home.

Contractual or statutory

A second feature which, if not novel, was unusual was that it was the plaintiffs who were anxious to establish that the female defendant's mother had been a statutory tenant. Both parties concerned at the time being dead, inferences had to be drawn, and his honour's view was that the mother, as daughter of the original tenant, at least thought that she was eligible under s. 12 (1) (g) of the 1920 Act, and was accepted as such. This is undoubtedly plausible, and perhaps inherently probable; but the fact that the rent had been increased presented the defendants with a point: they were able to argue that an agreement had been made when the rent went up by 3s. a week in May, 1947.

Somewhat breezily, if I may respectfully say so, the learned judge rejected this point by observing that perhaps structural repairs justified the increase, perhaps the rent had been reduced during the war; and that there was no evidence for the proposition that an increase of rent to a statutory tenant or tenant by transmission automatically created a new tenancy. It has indeed been held, in Northern Ireland, that an agreement to pay an increased rent does not in itself have the effect contended for (*Apsley v. Barr* [1928] N. Ir. R. 183); but if this decision would support the judgment *pro tanto*, *Ball v. Durdley* (1952), 160 E.G. 112 (C.A.), a three generations case in many respects similar to that before the court in *Gooda v. Sheldrake*, would afford far more substantial support for the defendants: the fact that the grandfather in that case had been tenant was held to be a *prima facie* answer to the claim against his grand-daughter, the onus thus being on the landlord to prove that the grandmother, who had lived in the house (the defendants living with her) after her husband's death, had done so as statutory tenant.

R. B.

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Country Practice

UNDERGROUND MOVEMENT

THE members of the exclusive Highfield Club were holding their first meeting. Mr. Highfield, who had supplied the refreshments, was elected president; and in a short speech of thanks he explained that he welcomed the honour as it would mean that someone else would have to act as secretary. This immediately raised a problem which the remaining members did nothing to solve. The president's suggestion (that any volunteer for the post of secretary would be excused membership fees) merely resulted in the club suddenly becoming solvent as members reached for their wallets. Finally, the president himself volunteered to keep the minutes, on the understanding that the activities of the other members would occasionally be referred to, if only between brackets. The president thereupon delivered his inaugural address.

* * * * *

It struck me (he said) that truly rural country solicitors like us ought to get together occasionally. So here we are, those of us who have a head for heights, in the lounge on the top floor of The Law Society's hostel, plotting and planning in a manner which might astonish those fellows in Chancery Lane. Not that I have a word of criticism against The Law Society; but do we, as rural practitioners, really make our voices heard? Not yet.

Look at Parliament. At every turn, a member of Parliament must be uneasily aware of such groups as the British Women's Total Abstinence Union, the Brewers' Federation, the Anti-Noise League and the Musicians' Union. But as for pressure on behalf of rustic solicitors and their clients, your best bet would be something thoughtful from the Women's Institute. (Various members thereupon gave high praise to the Women's Institute movement, which from time to time seems to achieve some amelioration in the wretched legal position of the country dweller. "Why," asked a Somerset member, "don't they do something about parking in village streets? My car is parked all night without lights in Lancaster Gate; but if I tried that in Upper Bubblecombe, where the lamps shine brightly but there isn't any traffic, I'd be landed with a summons in no time.")

Quite. And then look at sheep-dogs. I wrote an article once, pointing out the eccentric, mid-Victorian system of exempting wealthy farmers from having to pay 7s. 6d. A damn' silly piece of green paper posted to them, without request, and at public expense. A declaration which they sign and send to the local magistrates' clerk. A certificate by which the local bench, through their learned clerk, signify their approval of the application. The collation of hundreds of such approvals, and their onward transmission to the local taxation office, with lists and copies galore. And finally a certificate on another damn' silly piece of green paper sent at public expense by the county council to the surtax-paying farmer, telling him that he is exempt from dog tax. My article was published in THE SOLICITORS'

JOURNAL in October, 1958 (102 SOL. J. 756). What did Parliament do about it? They passed a silly, purposeless, consolidating statute entitled the Dogs Act, 1959, which merely perpetuated the mad, pitiful system. Can *nobody* tell any sane M.P. of the exasperation felt by everyone, even the farmers themselves, at the wholesale waste of effort in areas where the number of dog tax forms by far exceeds the total number of summonses, warrants, informations, complaints and all the rest of the petty sessional stationery put together?

(A member from Westmorland, himself a justices' clerk, here offered the president a restorative which was received with gratitude and some emotion.)

If this club had been in existence sooner, the Dogs Act, 1959, would never have been whelped. We would have marched on Westminster, with or without sheep-dogs, to corral our quivering legislators and shower them with green forms and well-merited abuse.

At this very moment, the Mother of Parliaments is about to make a howling idiot of herself over the Game Laws (Amendment) Bill. Would you believe it, but they are still tinkering about with the various Poaching Acts of 1828, 1831, 1844, 1851, 1862 and so forth? An amendment here and there, but not a single attempt to codify rationally the unsavoury mess. Just look at the definition of "game". In one Act, a bustard is game; in another it isn't. What is game in Scotland isn't game if it stupidly runs into or flies over England. By the 1862 Act, a pheasant's egg is "game" and therefore holy. The beautiful wild ducks of Falldon (if they are still there) are not game, and for most of the year enjoy no special protection. But heaven strike the sacrilegious rascal who takes a pheasant's egg on the sabbath day.

For years we have had our minds tortured by fine distinctions wrapped up in antique phraseology, whether in attempting to advise an outraged landlord or a bewildered poacher. Why are some birds game by night, but not by day? Why the class distinction, anyhow, between game and non-game? Why is the tasty capercaillie on a lower plane of protection than "black or moor game"? Why does cl. 4 of the new Bill include bustards in the definition of game, though the Protection of Birds Act, 1954, carefully eliminated bustards from that category? What about the honey buzzard, the black-tailed godwit, the red-breasted merganser, the coot, and the cuckoo—to take just one bird from each of the numerous Schedules to the 1954 Act?

Why not, in fact, a simple statute aimed at all trespassers, by day or by night, in pursuit of wild animals and birds, edible or inedible, on Sundays or on weekdays? Down with pettifogging legislation left over from Prinny, Sailor Bill and the first half of Good Queen Victoria's reign. On behalf of sanity we denounce this perfectly ghastly Bill. Forward, then, to Westminster, changing at Oxford Circus and Charing Cross. Mind the steps!

"HIGHFIELD."

POUSSIN'S PICTURES AT AN EXHIBITION

Three paintings by Poussin, the French artist, were loaned recently by the National Gallery to the Palais du Louvre, Paris (National Gallery (Lending outside the United Kingdom) (No. 1)

Order, 1960 (S.I. 1960 No. 690)), for inclusion in the Poussin Exhibition from Monday, 11th April to Wednesday, 31st August, 1960. The order came into operation on 31st March.

HERE AND THERE

OMBUDSMAN

WHEN first we began to notice little paragraphs in the newspapers about the Ombudsman we were in doubt whether he was the central figure of some masterpiece of Ibsen, one of the strange creatures that Peer Gynt met on his travels, or perhaps something out of Edward Lear. But the confusion only lasted while his figure was half-veiled for us by the thick spray of the North Sea. Now a real live Ombudsman has appeared in our midst and walked and talked among us and we know that if we were to acquire one of our very own we would call him in the hallowed idiom of Whitehall and Westminster a Parliamentary Commissioner for Grievances, which sounds less magical, less like an incantation from the dark pine forests of the North, but at least defines his sphere of influence. We are already liberally supplied with commissioners of one sort or another, nor do we lack a fine sturdy growth of indigenous grievances, so we may well ask ourselves what would be the result in our misty island climate of a cross-fertilisation between the two. Let us, then, see what the result has been in the clear air of Denmark where the Ombudsman who lately paid us a visit operates, though there are also Ombudsmen (is that the right plural?) in Sweden and Finland. His appointment is by Parliament, though he must not be a Member, and, at the cost of some £15,000 a year from public funds, he runs a little department designed to safeguard the rights of the private citizen against encroachments by the Government or its servants. He personifies all the village Hampdens of his country who are encouraged to lay their grievances before him. He is a sort of Sherlock Holmes let loose in the dusty corridors of the Ministries, with full powers of investigation, to probe the Mystery of the Missing File or the Secret Crime of the Government Inspector. Like all the great detectives of fiction, he is purely an investigator. At the end of the last chapter he can make known his decision but he cannot enforce it, nor has he any control over the courts of law. All Government servants come within his purview, from a bus conductor who has insulted a passenger to a diplomat who has been selling secrets to a foreign power; from a schoolmaster who wants to be free to teach syllabus divinity in class and atheism outside to the ballet master of a State-subsidised company of dancers who is alleged to have shown favour to some ballerinas for improper consideration.

BETWEEN TWO STOOLS

IN the matter of the protection of the helpless individual from official abuses the English have fallen between two stools, or rather perhaps have sat down heavily on a stool which is no longer there. It used to be the boast of the school of Dicey that England was blessed in having no *droit administratif* like lesser breeds without the Common Law, that here the Civil Servant was not a special sort of being but an ordinary citizen like everybody else subject to the

Rule of Law. That, of course, worked well enough as long as the man in the Government office sat quietly in his own little corner, allowed the ordinary citizen to get on with his day-to-day life and did not itch to interfere with matters which he did not understand. But the scene was fundamentally transformed when the era of Planning dawned and the whole weight of official backing was given to the notion that the man in Whitehall knows best. By Act of Parliament wide powers of confiscation and direction were given to the Town Halls and the Ministries uncontrolled by any supervision of the courts. It became a commonplace to make the Minister the judge in his own case. Under a system of *droit administratif*, as in France, the Conseil d'Etat would have brought the whole system under impartial control, not only through a judicial committee to hear and determine complaints of abuse of official powers, but also through other organs tendering advice to the Government and the Executive at a far earlier stage. It is a mere accident of historical development that our own Privy Council did not develop along those lines. It might yet be adapted to fulfil those functions.

ESSENTIAL REQUIREMENTS

BUT perhaps the essential English love of the semi-official, with its greater flexibility and avoidance of precise definition, would be better satisfied by an experiment in Ombudsmanship. It would all depend on the personality of the man (or woman) appointed or else the thing would become just another office. The first essential would be to find the semi-judicial philosopher detective which Denmark has found in Professor Stephan Hurwitz. It would not be much use if he were kept just pottering around at the level of investigating the sandwiches in the refreshment rooms of British Railways. Or, again, if, when some palpable injustice was done by an official, his functions were limited to saying, "Well, he was acting within the scope of the Act," without analysing and criticising the bad law that made the hard case, that would not be much use either. More than anything else the English Ombudsman would have to patrol incessantly the Criche Downs of England; make sure that the local authorities knew the difference between a slum which needed clearing and a charming group of old houses which needed restoring, even though their windows were smaller and their ceilings lower than some arbitrary calculation prescribed; watch those compulsory purchases at derisory figures to which local authorities are addicted. But, above all, the Ombudsman would have to be not just another advisory tribunal, whose advice could be habitually shelved. We already have far too easy a habit of ignoring committees, commissions, "wise men," perhaps because there are too many of them. If the Ombudsman were not by status habitually deferred to, the only alternative to anarchic tyranny would be a Conseil d'Etat with full judicial powers.

RICHARD ROE.

Society

THE WIGAN LAW SOCIETY held its fourth annual dinner at Haigh Hall, near Wigan, on 22nd March, when Mr. Allan Royle, president, was in the chair. Among the guests were Sir Sydney Littlewood, president of The Law Society; Judge Sir Basil Nield, C.B.E.; Judge Harold Brown; the Mayor of Wigan; Councillor S. Burgess; Mr. Thomas Alker, C.B.E., Town Clerk of Liverpool; Mr. Philip B. Dingle, C.B.E., Town Clerk of

Manchester; Mr. W. E. E. Lockley, Town Clerk of Preston; and Mr. Alan Blakemore, Town Clerk of Stockport.

At the annual general meeting held on 22nd April, Mr. T. M. Broadie-Griffith was elected president in succession to Mr. A. Royle. The following officers were appointed: Mr. J. Bonar Wood, hon. treasurer; Mr. J. D. Hopwood Sayer, hon. secretary; Mr. M. H. Coulson, hon. assistant secretary.

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(continued on p. xiv)

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(continued on p. xv)

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Court of Appeal

NUISANCE: POTENTIAL NUISANCE BECOMING
ACTUAL: LIABILITY

Pemberton v. Bright and Devon County Council

Sellers, Ormerod and Upjohn, L.JJ. 7th March, 1960

Appeal from Cassels, J.

In 1926 a county council as the highway authority widened a road under which ran a stream through an ancient brick culvert. Their operations involved their extending the culvert by means of a new pipe, the entrance to which was placed on the land of adjoining occupiers to the west of the road. The new entrance so made was left unprotected by any form of grid or grating for the succeeding thirty years. From time to time after the work was done, and at least until 1954, the county council's servants cleared the entrance to the culvert of dirt or debris which might cause a blockage. In 1934 the first defendants *B* became the occupiers of the land on which the entrance to the culvert was situated. In December, 1956, following heavy rainfall, the land and dwelling-house of the plaintiffs *P*, which was situated in a dip on the east side of the highway, became flooded by reason of the entrance to the culvert becoming blocked by debris. They brought an action in nuisance, claiming damages and a mandatory injunction against the occupiers *B*, who in turn instituted third-party proceedings against the county council; and on the trial the county council were joined as second defendants, the allegation against them being that they had in 1926 created a nuisance by the manner in which they had interfered with the stream and by their failure to protect the new entrance with a grid. The trial judge gave judgment against both defendants, apportioning the liability as to one-fourth against the occupiers and three-fourths against the county council; and he granted a mandatory injunction ordering the occupiers "at all times" to keep the culvert clear and unobstructed. Both defendants appealed.

SELLERS, L.J., said that in 1926 the county council created a potential nuisance which became an actual and actionable nuisance when, by reason of its being negligently left unprotected, it became blocked so that it dammed the water flowing in the stream and diverted it on to the plaintiff's land. A grid would have prevented the culvert becoming blocked in the situation which occurred on the night in December, 1956. The occupiers were clearly liable for the damage caused as the occupiers of the land on which the nuisance existed, and as the county council had created the trouble by their failure to complete the culvert properly with a protection they also were liable, and it made no difference to their liability that they had done the work as contractors in lieu of compensation. On the first defendants' claim that they were entitled to be indemnified by the county council on the basis of an agreement that the council would not only construct the culvert properly but maintain it thereafter, even if there were some such arrangement, the county council had powers under s. 67 of the Highway Act, 1835, to do what they had done, and there was not sufficient evidence to support any contractual obligation with the occupiers. Where damage had been caused by two sets of wrongdoers his lordship was not in this case prepared to alter the judge's decision on apportionment. He would dismiss the appeal, but agreed that the mandatory injunction should be modified.

ORMEROD, L.J., delivered a concurring judgment.

UPJOHN, L.J., also concurring, said that the mandatory injunction should be modified to restrain the first defendants

from allowing the entrance to the culvert to become blocked in such manner as to cause a nuisance to the plaintiffs.

APPEARANCES: *G. D. Squibb, Q.C.*, and *Thomas Dewar (Sharpe, Pritchard & Co., for H. G. Godsall, Clerk to Devon County Council)*; *N. R. Fox-Andrews, Q.C.*, and *J. F. E. Stephenson (Keene, Marsland & Co., for McLusky & Braddell, Exeter)*; *J. T. Molony, Q.C.*, and *H. E. L. McCreery (Arnold Carter & Co., for Dunn & Baker, Exeter)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

[1 W.L.R. 436]

HIGHWAY: INADEQUATE DRAINAGE:
MISFEASANCE OR NONFEASANCE

Burton v. West Suffolk County Council

Sellers, Ormerod and Upjohn, L.JJ. 11th March, 1960

Appeal from Salmon, J.

The plaintiff was driving his motor car along a road in a proper manner, when he ran on to a patch of ice which caused him to skid and crash into a tree. The ice had formed because of inadequate drainage; for the three days prior to the accident, the defendants' roadman had put out red flags and red lights to warn vehicles of the danger from flooding. On the day of the accident, the roadman had removed the red flags and red lights. Some nine months before the accident, the defendants, who were the highway authority responsible for the road, carried out certain drainage works to the road, but these were inadequate to prevent flooding when subject to heavy rain. The plaintiff sued the defendants for damages for the injuries he sustained and the damage to the car. Salmon, J., dismissed the plaintiff's claim because the defendants had not been guilty of any act of misfeasance. The plaintiff appealed.

SELLERS, L.J., said that the plaintiff had sought to rely on the defendants' liability in damages for active misfeasance by which the highway was made dangerous. The submission was, in effect, that, if a highway authority undertook the repair of a road but did not complete it sufficiently and adequately so that its condition still left a danger to road users, then that was misfeasance. The only repair work relied on was that in March, 1954, when the defendants did some drainage work on the part of the road in question. The judge had found that the defendants improved the drainage. Precisely what they did was not clear, but it served to take some of the water off the road, and so made the road somewhat less liable to flooding and less unsafe than it had been before. There was clearly nothing which the defendants did then which created any danger, actual or potential. Such work as was done was properly done. All that could be said was that enough was not done, which seemed to be a clear case of nonfeasance. *McClelland v. Manchester Corporation* [1912] 1 K.B. 118, on which reliance was placed for the plaintiff's submission, and the observations particularly of Lush, J., were referred to in *Sheppard v. Glossop Corporation* [1921] 3 K.B. 132. Banks, L.J., said ([1921] 3 K.B. 132, at p. 140): "*McClelland's* case was decided by Lush, J., on the same principle, although I think the head-note to the report does not sufficiently explain the decision. The defendants in that case had taken over an existing highway at the end of which there was a kind of ravine. They had made up the road and placed lights in it. There was apparently beyond the ravine another street, and they had made up this street also and placed lights in it. The jury came to the conclusion that by so making up the two streets with the ravine intersecting them the defendants had in effect set a trap for passers-by, and that by lighting the streets at night they had made the trap more dangerous

because a passenger seeing a continuous row of lights would assume that there was no interruption of the highway. In answer to questions put by the learned judge the jury found that the road as made up and constructed was a danger to persons lawfully using it; that the ravine which was unfenced was a hidden trap to persons using the road." That was the decision in the *McClelland* case, and it was, on those facts, a clear case of misfeasance. Lush, J.'s observations had apparently never been applied in the way argued by counsel, and they could be, as it appeared on their face, very far-reaching. There was an authority in this country, that of Morris, J., in *Wilson v. Kingston-upon-Thames Corporation* (1948), 64 T.L.R. 553, and an Irish case before Lord MacDermott, C.J., of *Quinn v. Ministry of Commerce* [1954] N. Ir. R. 131, which were both authorities contrary to the view expressed by Lush, J. In view of those authorities he felt no doubt that the court would be going in the face of the established law on this matter if they accepted the plaintiff's argument, and, like the judge, he had no hesitation in rejecting it. The second point regarding the failure to exhibit red lights availed the plaintiff no better. The roadman seemed to have been right when he concluded that there was no flooding and no necessity for lighting. There was no evidence that the defendants ever gave warning of a frosty or icy road in any way. But even if the defendants did fail to assist road users in a way which was their practice, there was no duty on them to light or give warning.

ORMEROD and UPJOHN, L.J.J., delivered concurring judgments.

APPEARANCES: *Stephen Chapman, Q.C.*, and *Eric Myers (Ward, Bowie & Co., for Rustons & Lloyd, Newmarket); Martin Jukes, Q.C.*, and *D. E. Hill-Smith (Berrymans)*.

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law] [2 W.L.R. 75]

PRACTICE: DISCOVERY: WHETHER EXCLUSION OF DISCOVERY ON FORFEITURE CLAIM EXTENDS TO COUNTER-CLAIM

Mascherpa v. Direct, Ltd.

Hodson, Willmer and Devlin, L.J.J. 21st March, 1960

Appeals from an official referee.

Defendants to an action for possession of certain premises for breach of covenant contained in the lease counter-claimed for relief under s. 146 (2) of the Law of Property Act, 1925. An order was made on them for discovery of documents "excluding . . . those documents relating to the issue of forfeiture." They appealed.

HODSON, L.J., said that the contention of the defendants here was that this was a case where the only matter in issue was forfeiture, and they argued that if that was not precisely correct, the position was that their claim for relief was so closely allied to the plaintiff's claim for possession based on forfeiture that the protection which the law gave them on the forfeiture matter should cover them as to the counter-claim. They relied on *Earl of Mexborough v. Whitwood Urban District Council* [1897] 2 Q.B. 111. The headnote read: "In an action to enforce a forfeiture of a lease for breach of covenant the court will not grant discovery of documents . . . for the purpose of establishing the forfeiture." In this case there was more than one issue, and for that reason the order of the official referee was right. The pleadings on the question whether relief should be granted contained a number of matters, quite apart from the question raised as to the want of repair of the premises. The official referee had by the form of his order enabled the two matters to be kept separate. His order was good in law and the appeal should be dismissed.

WILLMER and DEVLIN, L.J.J., concurred.

APPEARANCES: *David Weitzman, Q.C.*, and *Peter Weitzman (Gale & Phelps); Norman Tapp (Gordon, Dadds & Co.)*.

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 447]

Chancery Division

MONEYLENDER: MORTGAGE: CONTENTS OF ORIGINATING SUMMONS

Lewis v. Packer

Danckwerts, J. 15th October, 1959

Adjourned summons.

By two legal charges dated respectively 25th March, 1955, and 19th April, 1955, the defendant charged property by way of legal mortgage with payment to the plaintiff, a licensed moneylender, of moneys due under two promissory notes. In January, 1958, the property was sold by prior mortgagees but the proceeds of sale were insufficient to pay the amount due to them. The plaintiff applied by originating summons dated 6th February, 1957, under R.S.C., Ord. 55, r. 5A, for payment of the moneys secured. The defendant objected that the summons did not contain the statements of fact which a statement of claim should contain in order to comply with Ord. 20, r. 10, and Ord. 3, r. 10.

DANCKWERTS, J., said that the defendant's objection had common sense to commend it and it might be that the rules should be changed, but the objection failed because, although proceedings commenced by originating summons were an action, the originating summons was not a statement of claim and Ord. 20, r. 10, did not apply to it. It had sometimes been said that the affidavit in support of an originating summons was equivalent to a statement of claim, but it was in fact not a statement of claim and compliance with the requirements of proof under Ord. 55, r. 5A, was sufficient for an originating summons brought under that rule.

APPEARANCES: *E. W. H. Christie (L. A. Lewis & Co., Manchester);* the defendant appeared in person.

[Reported by Miss M. G. THOMAS, Barrister at Law] [1 W.L.R. 452]

Queen's Bench Division

CONTRACT: EXCEPTIONS CLAUSE: TENANCY AGREEMENT

Akerib v. Booth & Others, Ltd.

Jones, J. 18th December, 1959

Action.

By a written agreement, the defendants let to the plaintiff certain offices and warerooms in their premises, retaining possession of a water closet on a higher floor. Water escaped from a cistern in this water closet by the admitted negligence of the defendants or their servants, and did damage to the plaintiff's goods. The defendants relied upon a clause in the tenancy agreement: "The landlord shall not in any circumstances be liable for damage caused by . . . water . . . to any goods whether in the possession of the landlord or not." Goods were defined elsewhere in the agreement as including "the tenant's goods," which in turn were defined as including "all goods bought by or belonging to the tenant, or in which the tenant may be interested, or which may come under his control in connection with the business of the tenant as carried on upon the premises."

JONES, J., in a reserved judgment, said that the words of the exemption clause were as wide as they could possibly be, and they were wide enough, having regard to the authorities, to entitle the defendants to be protected by that exemption clause, and consequently to resist the liability for the damage that was done to the plaintiff's goods. Judgment for the defendants.

APPEARANCES: *J. R. D. Crichton, Q.C.*, and *C. N. Glidewell (Linder, Myers & Pariser, Manchester); Fenton Atkinson, Q.C.*, and *A. K. Hollings (A. W. Mawer & Co., Manchester)*.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 454]

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(continued on p. xvii)

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LICENSING: JUSTICES: STATUTORY PERIOD BETWEEN MEETINGS

**R. v. Woodbury Licensing Justices; ex parte Rouse
Same v. Same; ex parte Oldham**

Streatfeild, Ashworth and Hinchcliffe, JJ.

1st April, 1960

Application for order of mandamus.

By para. 5 of Pt. I of Sched. II to the Licensing Act, 1953: "The times and places appointed for the second or any subsequent session of the general annual licensing meeting shall be such as appear to the justices convenient for persons intending to apply for justices' licences; and the times so appointed shall not be earlier than the sixth day after the session of the general annual licensing meeting at which they are appointed or later than one month after the first day of the general annual licensing meeting." At a general annual licensing meeting held on 1st February, 1960, the justices ordered the second meeting to take place on the first Monday in March. Owing to leap year, instead of the first Monday falling on 1st March, it fell on 7th March. Two applications were made on 11th and 12th February respectively, one for a justices' licence and the other for a removal. When the applicants attended the meeting on 7th March they were told that the justices could not hear their applications because it was more than five weeks since the last meeting. The applicants moved the court for an order of mandamus to the justices to hear and determine the applications.

STREATFEILD, J., said that there was mentioned in Paterson's Licensing Acts, 68th ed., p. 1025, a case in 1932 which was on all fours with the present one (*R. v. Kingston Justices* [1932] Br. Tr. Rev. 154, which was only reported in the *Brewing Trade Review*). It seemed to their lordships that the principle upon which they could act in order to set this matter right was contained in *R. v. Farquhar* (1874), L.R. 9 Q.B. 258, in which Blackburn, J., said: "All we can do is to grant a mandamus to the justices to hold a licensing meeting to hear and consider the objection to the renewal on notice to the applicant, and to decide, after hearing him,

according to law and fact. We have power to order the justices to do this now, though the proper time has gone by, on the authority of the decision of the Exchequer Chamber in *Rochester Corporation v. R. El. Bl. & El.* (1858), 1024; 27 L.J.Q.B. 434. The rule, therefore, will be absolute for a mandamus commanding the licensing justices, or some of them, to hold a meeting, with notice to the applicant, and then to hear and determine the question of the renewal of his licence." Quain, J., said ((1874), L.R. 9 Q.B. 258 at p. 262): "The intention of s. 42 is that there should be a due hearing, and it is only on the objection failing in point of law or on the facts that he is entitled to the renewal. But to say that merely because he has not been required to attend at the adjourned meeting, he is now to have a licence granted as of course, is a proposition quite unmaintainable. The mandamus must be to the justices to assemble a meeting for the purpose of hearing Gardner's application, they having given him notice to attend, and hearing the case just as they would had they proceeded regularly in the first instance under s. 42 (2)," and Archibald, J., concurred, saying: "I am of the same opinion, it being understood that the mandamus is to be in the limited form to hear and determine only." It seemed to his lordship that those words covered the present situation, and that the court had power to make an order absolute calling upon the justices to hold a meeting for the purpose of hearing and determining these two applications.

ASHWORTH, J., agreed.

HINCHCLIFFE, J., also agreed.

[The court heard argument on whether notices which had been given in respect of these applications before the justices, and which would have been in time if the applications had been heard on 7th March, were effective notices for the hearing which was now to be fixed. The court held that the notices already given were effective. Their lordships considered the question of costs but made no order.]

APPEARANCES: *Francis Irwin (Field, Roscoe & Co., for Ford, Simey & Ford, Exmouth)*; the justices were not represented.

[Reported by Miss EIRA CARYL-THOMAS, Barrister-at-Law] [1 W.L.R. 461]

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Cinematograph Films (Registration of Newsreels) Regulations, 1960. (S.I. 1960 No. 712.) 6d.

Discontinuance of Legal Police Cells (Scotland) Rules, 1960. (S.I. 1960 No. 693.) 5d.

Gambia (Constitution) Order in Council, 1960. (S.I. 1960 No. 701.) 1s.

Gambia Protectorate (Amendment) Order in Council, 1960. (S.I. 1960 No. 702.) 4d.

Grass and Clover Seeds (Scotland) General Licence, 1960. (S.I. 1960 No. 713.) 5d.

Kenya (Constitution) (Amendment) Order in Council, 1960. (S.I. 1960 No. 703.) 4d.

Legal Advice (Amendment) Regulations, 1960. (S.I. 1960 No. 729.) 4d. See p. 315, ante.

Legal Aid (General) (Amendment) Regulations, 1960. (S.I. 1960 No. 730.) 5d. See p. 315, ante.

Legal Aid (Scotland) (General) (No. 5) Regulations, 1960. (S.I. 1960 No. 725.) 5d.

London Traffic (Prescribed Routes) Regulations, 1960:—

Brentford and Chiswick (No. 2). (S.I. 1960 No. 696.) 5d.

Hammersmith. (S.I. 1960 No. 697.) 4d.

London Traffic (Prohibition of Waiting) Regulations, 1960:—

Hertford (Amendment). (S.I. 1960 No. 722.) 5d.

London Traffic (Weight Restriction and Speed Limit) Regulations, 1960:—

Slough (Revocation). (S.I. 1960 No. 723.) 4d.

Westminster (No. 3). (S.I. 1960 No. 721.) 4d.

National Insurance and Industrial Injuries (Republic of Ireland) Order, 1960. (S.I. 1960 No. 707.) 8d.

Nigeria (Offices of Governor-General and Governors) (Amendment) Order in Council, 1960. (S.I. 1960 No. 704.) 5d.

Poisons List Order, 1960. (S.I. 1960 No. 698.) 8d.

Poisons Rules, 1960. (S.I. 1960 No. 699.) 2s. 1d.

Probation (Conditions of Service) Rules, 1960. (S.I. 1960 No. 717.) 7d.

Stopping up of Highways Orders, 1960:—

County of Gloucester (No. 4). (S.I. 1960 No. 720.) 5d.

County of Hereford (No. 1). (S.I. 1960 No. 710.) 5d.

County of Hertford (No. 3). (S.I. 1960 No. 709.) 5d.

Supreme Court Funds Rules, 1960. (S.I. 1960 No. 728.) 5d. See p. 334, ante.

Town and Country Planning (Control of Advertisements) Regulations, 1960. (S.I. 1960 No. 695.) 1s. 5d.

Training of Teachers (Local Education Authorities) Amending Regulations, 1960. (S.I. 1960 No. 708.) 4d.

Wages Regulation (Aerated Waters) (England and Wales) Order, 1960. (S.I. 1960 No. 719.) 7d.

SELECTED APPOINTED DAYS

April

22nd Wages Arrestment Limitation (Amendment) (Scotland) Act, 1960.

25th

Wages Regulation (Industrial and Staff Canteen) Order, 1960. (S.I. 1960 No. 615.)

May

2nd Rules of the Supreme Court (No. 1), 1960. (S.I. 1960 No. 545.)

REVIEWS

Oyez Practice Notes No. 20: Conveyancing Costs including Non-Contentious Probate Costs. Third Edition. By J. L. R. ROBINSON. pp. 95. 1960. London: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

A new edition of this useful booklet is most welcome. Production was suspended for some time because costs in relation to leases were under review. Apparently there is no immediate prospect of changes in these scales and so further delay would not be justified. It is important that solicitors should have an up-to-date account of conveyancing costs particularly in view of the increased scale fees on sales, purchases and mortgages where the consideration is less than £1,000, which apply when instructions are accepted on or after 1st January, 1960 (Solicitors' Remuneration Order, 1959; Solicitors' Remuneration (Registered Land) Order, 1959).

The text contains an account of the costs chargeable as regards transactions affecting both registered and unregistered land and non-contentious probate costs. The first appendix consists of scales applicable to sales and purchases, mortgages and leases. These are printed fully so that the exact charge can be seen quickly and footnotes draw attention to exceptions and unusual provisions. Precedents of bills in connection with wills and contracts, and of bills under Sched. II and against executors and administrators are provided in the second appendix. The relevant provisions of the Solicitors Act, 1957, and the various Orders and Rules are printed in App. III.

This publication contains all the information a solicitor is likely to require. The tables (including unusual ones such as that recommended for payments by local authorities in discharge of liabilities for vendors' solicitors' costs) are available for quick reference. On the other hand there is also a sound account of rules which are not always clearly understood or accurately applied, for instance those affecting negotiating fees and those governing the charging of separate scale fees where there are separate deeds of conveyance.

Clinical Toxicology. By C. J. POLSON, M.D. (Birm.), F.R.C.P., M.R.C.S., of the Inner Temple, Barrister-at-Law, and R. N. TATTERSALL, O.B.E., M.D. (Lond.), F.R.C.P. pp. xi and (with Index) 589. 1960. London: The English Universities Press, Ltd. £2 2s. net.

This book will occupy a useful place in many libraries, covering as it does a fairly large but by no means comprehensive list of poisonous substances which may be encountered in practice. It is, however, pertinent to define "toxicology." The Shorter Oxford English Dictionary says "the science of poisons," "that department of pathology or medicine which deals with the nature and effect of poisons." This is mentioned in passing because it appears to have been usurped by the analytical chemist; but not on this occasion.

This particular book makes no attempt to deal with the technical aspect of analysis or, for that matter, to interpret the result of such an analysis, and confines itself to the clinical signs, symptoms and treatment of the various poisons, quoting cases, some of which come from the authors' own experience. As is to be expected, any book associated with the name of Polson will always include a most valuable collection of references, for which reason alone it is worth buying by anybody who is interested in the subject, and who has to search the literature. It is also of interest because it is one of the few books on the subject which deal with it separately, for most of the information is to be found in the ordinary text-book of forensic medicine, which, owing to lack of space, results in neither forensic medicine nor toxicology being dealt with in full.

Part I deals, *inter alia*, with the law relating to poisons and, although probably adequate for practitioners, may be rather elementary for pharmaceutical chemists or lawyers. In any event the legal aspect is already well covered in the literature. There is no doubt that for those who practise forensic pathology the book will be a great asset and also for clinicians and those who may be confronted with cases of poisoning.

Part II is devoted to individual poisons and one particularly useful chapter is on carbon monoxide poisoning, especially in relation to the literature on the subject, as there is a danger that the casual "brushing aside" of suggestions of carbon monoxide poisoning in cars might, if the cases recorded of death are not

known, lead to a miscarriage of justice in cases of alleged intoxicated drivers.

It still, however, does not completely fill the gap left by the absence of a true reference book on the subject, which could, of course, not be accomplished in so few pages. Nevertheless, it is an advance on most of the books already in existence and certainly justifies the amount of time and work required to produce it.

Harris's Criminal Law. Twentieth Edition. By H. A. PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law, and HENRY PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. pp. li and (with Index) 706. 1960. London: Sweet & Maxwell, Ltd. £2 5s. net.

This is an excellent book for students of this branch of the law and we do not think that there is a work which is better suited to meet their requirements. Although the general plan remains the same as in previous editions, certain alterations in form have been made, in particular by the division of some chapters into a greater number of sections. This change is welcome because it makes for easier reference.

Since the publication of the last edition, several important statutes, such as the Sexual Offences Act, 1956, the Road Traffic Act, 1956, and the Homicide Act, 1957, have found their way into the Statute Book and amendments necessitated by these and other Acts of Parliament and by recently decided cases have been made in the appropriate places. If there is one criticism that we would make it is that the question of the criminal liability of corporations is a topic which, in our view, deserves to have more than one paragraph devoted to it. However, this is a small point, and it is clear that this book will continue to provide the information required by all who need to learn the fundamentals of criminal law and procedure.

The Legal Profession. Fifth Edition. By PETER ALLSOP, M.A., of Lincoln's Inn, Barrister-at-Law. pp. x and (with Index) 138. 1960. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

The fact that this new edition is the fifth since this handbook was first published in 1933 is testimony in itself to the useful purpose which it serves. Training and qualifications required for would-be barristers and solicitors are described and the legal degree courses of English and Welsh universities are outlined. The main part of the book is intended to guide the student in his choice of books.

The author's preface is dated January, 1960, which explains why he has not included the books prescribed for The Law Society's trust accounts examination of next November and subsequently (see *Law Society's Gazette*, March, 1960, p. 189). On p. 29, however, it is stated that the fee for registering articles with The Law Society is £1; since 1957 this fee has been £3. On p. 124, where books for The Law Society's final examination are listed, no book specialising on stamp duties is mentioned; p. 43, somewhat superfluously, also lists books for this examination and here Monroe's Stamp Duties is named but not Nyland's Stamp Duties. On p. 71 it is stated that this journal, *inter alios*, is beyond the means of students; no mention is made of the fact that certain articulated clerks and newly admitted solicitors can obtain a reduced annual subscription of £3 5s. which bears comparison, e.g., with the minimum annual subscription for *Current Law* of £4 4s. These are, however, minor points in a book of over 130 pages packed with useful information selling for the very modest price of 10s. 6d.

BOOKS RECEIVED

Oyez Table No. 3: Legal Costs on the Grant of a Lease. Fourth Edition. Comprising Stamp Duties (as at 1st August, 1958), Solicitors' Remuneration (including additional costs on premium as at 1st January, 1960) and Land Registry Fees. 1960. London: The Solicitors' Law Stationery Society, Ltd. 2s. net.

Crime Documentaries: No. 1—Guenther Podola. By RUPERT FURNEAUX. pp. xi and 319. 1960. London: Stevens & Sons, Ltd. 18s. 6d. net.

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Dorking & London.—PEARSON, COLE & SHORLAND, Auction and Estate Offices, Dorking. Tel. 3897/8. Surveyors, Valuers and Auctioneers; and at 2 Hans Road, S.W.3. Tel. Kensington 0066.
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(continued on p. xviii)

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Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oves House, Breems Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Costs—ENFORCEMENT OF ORDER FOR PAYMENT OF TAXED COSTS

Q. I act for *A*, who recently obtained an order against *B* in the county court for the discharge by *B* of a mortgage and for payment of *A*'s taxed costs. The mortgage has been discharged but *A*'s taxed costs amounting to £47 remain unpaid. An execution against the goods of *B*, an elderly woman of eighty, is suspended as all the goods in *B*'s house are claimed by her daughter, *C*. The solicitors acting for *B* and *C* assure me that *C* owns the goods and that *B* has recently executed to *C* a deed of gift of all her freehold property (comprising the house occupied by them, a shop and five tenanted cottages) which is subject to a bank mortgage. It is intended to compel *C* to prove her ownership of the goods but, assuming she succeeds, can you please direct me to any procedure (apart from bankruptcy proceedings which are not open to *A*, whose debt is less than £50 and who does not at present know of any other creditor with whom she can join) whereby *A* can have the deed of gift set aside; or, indeed, to any other remedy of which *A* can avail herself.

A. Assuming that this cannot be proved to be an avoidable transaction under s. 172 of the Law of Property Act, 1925, there appears to be no way in which the deed of gift to *B*'s daughter can be attacked except in bankruptcy proceedings. Apparently *B* has a bank account. This could be garnisheered and, if an overdraft is shown, the bank might possibly be persuaded to join in a bankruptcy petition. Failing finding a co-operative creditor, your best course would be to issue a judgment summons. On the facts stated, it seems at least possible that the deed of gift was executed after judgment, so that *B* has had the means to pay. In these circumstances, it is unlikely that the judge will be unduly sympathetic towards her, even taking her age into consideration, and should make some instalment order. You should then be able to obtain costs under Ord. 25, r. 66 (1) (a). If more than one attendance is necessary, which will quite possibly be the case, the costs incurred together with conduct money paid may well bring the total debt to over £50.

Income Tax—PROFITS—PURCHASE OF METAL AN "ADVENTURE IN THE NATURE OF TRADE"

Q. I act for a client who is a paper merchant. A little while ago, he purchased a quantity of metal and after having retained it for a short while he succeeded in selling it at a profit. The income tax authorities are claiming tax in respect of this profit. My client is clearly not a metal dealer, but some authorities are clearly against him and these the inspector of taxes has quoted. I am wondering whether you could possibly refer me to any cases which would constitute some kind of argument on which to contend against the inspector's arguments.

A. The Income Tax Act, 1952, by ss. 123 and 526, charges tax on the profits, *inter alia*, of any adventure in the nature of trade. Your client purchased a quantity of metal. He could not have done so in order to derive an income from it, for metal cannot yield an income. He could not have done so, as a man might purchase a picture, to enjoy its beauty. He could not have done so in order to use it in or about his daily activities, for it does not seem that it would have been of any use to him. Therefore by a process of elimination it seems to us that he must have bought it in order, in due time, to sell it again, preferably at a price higher than that at which he purchased it. Such a transaction appears to us to be an adventure and also to be an adventure in the nature of trade, because buying in order, sooner or later, to sell again, and for no other purpose, is the very archetype of trade. In short, we think the profit is charged with income tax and, if appropriate, surtax and we do not know of any argument which could usefully be advanced to the contrary.

Income Tax—REPAIRS ALLOWANCE ON DILAPIDATED PREMISES

Q. A firm of solicitors purchased premises in a dilapidated condition as to decorations and repairs. They made certain structural alterations in the premises, altering the layout of the rooms by partitioning, and carried out repairs and decorations.

Most of the repairs could have been carried out some time in the future, but as work was proceeding with the structural repairs it was decided to carry out the repairs at the same time. The inspector of taxes refuses to allow any allowance for repairs and decorations and a "shipping" case has been quoted. Can you please advise whether the inspector is correct?

A. The case concerned is *Law Shipping Co., Ltd. v. Inland Revenue Commissioners* [1924] S.C. 74; 12 T.C. 621, and we are afraid that we think that the inspector of taxes is correct. The principle may be put two ways, the second more technical than the first. The first proposition is that if the premises had been in good condition when purchased they would presumably have cost more and the whole of their cost would have been of a capital nature: it cannot be any different if they are bought more cheaply because they are in a dilapidated state and the difference (or more than the difference) is spent on putting them into good condition: in other words, the total expenditure is incurred in producing an asset fit to be used in the business. The second proposition is that the money expended on repairs is not deductible because it was not expended on making good damage or disrepair which had been produced by wear and tear in the course of use for the purposes of the business. If this latter proposition were pressed to its logical conclusion there might have to be an apportionment when money was spent on any asset which had not been employed in the business since new: in fact and in practice it is not and cannot be pressed to its logical conclusion, but that does not prevent its application in such a case as the present.

Adoption—SETTLEMENTS MADE ON ADOPTED CHILDREN

Q. *A* made settlements in 1921 and 1926 whereby interests were given, *inter alia*, to the children of *B*. *B* and his wife had no children of their own, but in 1926 he informed *A* of his intention to adopt some children. In 1929 and 1938 *B* adopted children in respect of whom adoption orders were made by the courts in those years. Under s. 16 (2) of the Adoption Act, 1958: (a) Can it be assumed that the Act refers to wills and settlements created before the Act and not merely those made after? (b) Is it correct to assume that *B*'s adopted children will not be able to take under the settlements as the settlements were made before the date of the adoption orders?

A. (a) No. The Adoption Act, 1958, s. 16 (2), re-enacts the Adoption Act, 1950, s. 13 (2). The 1950 Act, s. 13 (2), applied, and the 1958 Act, s. 16 (2), applies only to a disposition made after the date of the adoption order. (b) Yes. In the absence of a relevant statutory rule the reference to a child does not include an adopted child.

Covenant—BREACH—GIVING OF PIANO LESSONS A BUSINESS

Q. In a deed of mutual covenants dated in 1910 under the heading of trades, there is a covenant not to carry on, *inter alia*, any trade or business and to use the premises for the purpose of a private dwelling-house only. The property in question is a semi-detached dwelling-house. The purchaser, who has not signed the contract, proposes to use the house he is purchasing for residential purposes, but he also proposes to give piano lessons on the premises, mostly in the evenings and only two or three times a week, but presumably for reward. Would this be a breach of covenant?

A. We have been unable to trace a decision relating to the giving of piano lessons. Our opinion is, however, that the action proposed would be a breach of covenant. It was said in *Rolls v. Miller* (1884), 27 Ch.D. 71, at p. 88, that the word "business" means "almost anything which is an occupation, as distinguished from a pleasure—anything which is an occupation or duty which requires attention is a business." Consequently, we think that the giving of piano lessons regularly for reward is a business and involves use of the premises other than as a private dwelling-house.

"THE SOLICITORS' JOURNAL," 28th APRIL, 1860

On the 28th April, 1860, THE SOLICITORS' JOURNAL reported: "On Wednesday last the Honourable Society of Lincoln's Inn entertained Mr. George Frederick Watts, the eminent artist, and painter of the great fresco picture of Lincoln's Inn Hall. Lord St. Leonards, Lord Justice Knight Bruce, Vice-Chancellor Kindersley, Vice-Chancellor Wood, and a very large attendance of benchers, barristers and students were present . . . The cloth having been removed . . . Mr. Koe, Q.C., the present Treasurer of the Society, . . . delivered the following address to Mr. Watts, at the same time presenting him with a very beautiful and valuable silver gilt cup:—'Mr. Watts, in the name of this Society I offer you our earnest acknowledgments for the noble decoration with which you have enriched our Hall . . . We congratulate you upon the result of those labours in the production of a work of exalted art—classical and appropriate in composition, grand in scale and chaste and noble in execution, and which, in its judicious alliance of painting and architecture, stands single, as we believe in this country—a monument to your reputation as

an artist, not for these days only, but to endure as long as the structure that bears it shall remain. We do not forget that we owe this present to your generous love of art for its own sake . . . Not, therefore in the character of compensation, but as a testimony of our friendly feeling for the man who has selected us as the recipients of so valued a gift and of our appreciation of his genius as an artist, allow us . . . to present this cup for your acceptance. Long may you continue to advance the interests of elevated art and pure taste . . . and to reap the fruit of your talents . . . in the form to which those talents give you so just a title!' Although no reference is made in this address to the intrinsic value of the present by which it was accompanied, we may mention that it was not only of great worth in itself, but that the lid covered a purse containing five hundred new sovereigns. Mr. Watts replied in a suitable speech, in which he alluded to the great benefit to the cause of art which might be expected to follow the example which had been set by the Society of Lincoln's Inn."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Road Accidents and Bank Holidays

Sir,—I understand that there is a move being made to increase the length of bank holidays. Surely this will make the road congestion and the number of accidents greater; since those, who are at present deterred from trying to use the roads because the length of the holiday makes the trouble of the journey not worth while, will be induced to try to travel by car.

I was glad to read your editorial about road accidents and bank holidays in your issue of 22nd April (p. 315). When Sir John Lubbock's (Lord Avebury) Act was passed in 1871, people worked twelve or more hours a day six days a week for

fifty-two weeks a year. The Act and its successor have done their work. Now most people expect to work only eight hours a day for five days a week for fifty weeks a year.

The problem is not now how to ensure that people get holidays, but to prevent them all trying to get away at the same time.

Deaths and accidents on the roads are due to selfishness. But this is very much produced by the frustration of the frightful congestion on the roads, which breeds impatience and increases the effect of selfishness.

M. C. BATTEN.

London, E.C.4.

NOTES AND NEWS**Personal Notes**

Mr. PETER JOHN ARNOLD, solicitor, of Leeds, was married to Miss Patricia Ann O'Grady on 23rd April.

Mr. T. B. FELTHAM, Town Clerk of Hereford, is to retire in September after thirty-one years' service.

Obituary

Mr. DONALD ALBERT STEVENSON CASH, solicitor, of Derby, died on 19th April, aged 62. He was admitted in 1921. Mr. Cash was a former president of the Derby Law Society.

Mr. JOHN WILTON HAINES, solicitor, of Hucclecote, Gloucestershire, died on 24th April, aged 84. He was admitted in 1899.

Judge JOHN MELVILLE KENNAN, the Bradford County Court Judge since 1958, died on 21st April, aged 55. He was called to the Bar in 1930.

Mr. EDWARD ALEXANDER MORLING, solicitor, of Maidstone, Kent, died on 19th April, aged 56. He was admitted in 1936.

Mr. CHARLES HASTINGS NEW, solicitor, of Hastings, died on 19th April, aged 72. He was admitted in 1910.

Mr. HARRY HAMILTON SPEAKMAN, solicitor, of Manchester, died on 15th April, aged 79. He was admitted in 1908.

Mr. WILLIAM MORGAN STEELE, solicitor, of Kidsgrove, Staffordshire, died on 11th April, aged 70. He was admitted in 1925.

Wills and Bequests

Mr. T. L. CALDERWOOD, solicitor, of Swindon, left £53,482 net.

Mr. C. O. LLOYD, solicitor, of Newport, Mon., left £43,188 net.

PRINCIPAL ARTICLES APPEARING IN VOL. 104

1st to 29th April, 1960

For list of articles published up to and including 25th March, see p. 256, ante

	PAGE
Admissibility of "Hearsay"	320
American Share Warrant, The	343
Charities Bill, The	337
Control: A New Transmission Point (Landlord and Tenant Notebook)	346
Credit Selling: Budget Accounts and Hire Rental	280
Distress for Rates Act, 1960, The	300
Dividends: Capital or Income?	278
Ethelred Touch, The (County Court Letter)	262
Incidence of Nuisance Abatement Notices (Landlord and Tenant Notebook)	322
Inferences from Payment of Rent (Landlord and Tenant Notebook)	302
Latent Defect in Sale by Sample	339
Lawyers and Contempt	277
Local Government Commission, The	282
Local Law	297, 318, 341
Local Searches (Practical Conveyancing)	263
Noteworthy Occasions (County Court Letter)	299
Opposition to Adoption Orders	298
Pink 'Un	284
Searchlight on the Chancery Division: The Harman Report	260
Sub-tenancies of Part after Decontrol (Landlord and Tenant Notebook)	283
Tortfeasor's Liability Extended, The	259
Underground Movement (Country Practice)	347
Variation or Replacement? (Landlord and Tenant Notebook)	264
Wilful Refusal to Consummate	317

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

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PUBLIC NOTICES

BOROUGH OF GRAVESEND ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary within the Special Grade (£835-£1,165) according to ability and experience.

Applications will be considered from newly-qualified solicitors. Local government experience an advantage but not essential. Housing accommodation will be provided if required.

Applications stating age, experience, and qualifications and the names of two referees must be received by me not later than 11th May, 1960.

F. W. HARRISON,
Town Clerk.

Municipal Offices,
Woodville Terrace,
Gravesend, Kent.

COUNTY BOROUGH OF HALIFAX LEGAL STAFF

SENIOR ASSISTANT SOLICITOR.—A.P.T. V (£1,220-£1,375 p.a.) for conveyancing, advocacy, general legal work, town planning appeals and Committee work.

ASSISTANT SOLICITOR.—Special Grade (£835-£1,165 p.a.) for conveyancing, advocacy and general legal work. A starting salary of about £960 will be considered for solicitors of at least 12 month's standing and appropriate experience.

Applications with names and addresses of two referees, to be sent to the Town Clerk, Town Hall, Halifax, by 9th May, 1960. No housing accommodation can be offered.

CIVIL SERVICE COMMISSION FOREIGN OFFICE

ASSISTANT LEGAL ADVISERS

Two non-pensionable for men or unmarried women barristers or admitted solicitors (England or Northern Ireland) or advocates or qualified solicitors (Scotland), at least 22 and under 31 on 1.4.60, preferably with experience of legal research. Persons without one of the above qualifications may apply if they intend to obtain one at an earlier date. One post is expected to continue indefinitely, and will probably lead to establishment, the other is expected to last for a number of years at least. Starting salary (men, London) £738 (at 22)-£1,050 (at 30) rising after completion of 1 year's service over age 26 to scale £1,080-£1,610. Promotion prospects to higher posts. Write Civil Service Commission, Burlington Gardens, London, W.1, for application form, quoting 5131/60. Closing date 20th May, 1960.

CITY OF CARDIFF

Appointments of (a) ASSISTANT SOLICITOR, A.P.T. 4 (£1,065-£1,220), local government experience preferable; (b) ASSISTANT PROSECUTING SOLICITOR, Special Scale (£835-£1,165), previous experience desirable but not essential.

Apply immediately giving names and addresses of two referees.

S. TAPPER-JONES,
Town Clerk.

City Hall,
Cardiff.

LANCASHIRE COUNTY COUNCIL

TWO ASSISTANT SOLICITORS required in the Clerk of the County Council's Department. Salary £1,065-£1,220. Commencing salary according to age and experience. Post offers opportunity to gain administrative experience. Appointment is superannuable and subject to certificate of fitness. Applications, stating age, details of qualifications and experience and the names of two referees to the Clerk of the County Council (E), County Hall, Preston, by Wednesday, 11th May.

MINISTRY OF LABOUR

LEGAL ASSISTANT (temporary) in London required by the Ministry of Agriculture, Fisheries and Food. Candidates must be over 26 years of age, qualified Barristers or Solicitors and have practical experience of conveyancing. Salary according to age on inclusive scale (men) £905 (at age 26) to £1,050 (at age 30 or over) to a max. of £1,610. After one year's satisfactory service salary would be increased to between £1,080 (at age 27) to £1,180 (at age 30 or over). Salaries for women slightly lower. Application forms from Manager (PE. 1341) Ministry of Labour, City of London Employment Exchange, Professional and Executive Register, Atlantic House, Farringdon Street, London, E.C.4.

Amended Advertisement

HEBBURN URBAN DISTRICT COUNCIL

APPOINTMENT OF CLERK OF THE COUNCIL

Applications for the above appointment are invited from solicitors. The appointment will be subject to the conditions of service recommended by the Joint Negotiating Committee for Town Clerks and District Council Clerks and the salary will be within the range for population of 20-30,000.

The appointment will be terminable at any time by three months' notice on either side.

Applications, stating age, qualifications, experience, previous and present appointments, together with the names and addresses of two referees, to be sent to the undersigned not later than Tuesday, 3rd May, 1960.

J. R. PASSEY,
Clerk of the Council.

Council Offices,
Hebburn,
Co. Durham.

BOROUGH OF BEXLEY ASSISTANT SOLICITOR

Commencing salary £1,000 per annum rising by annual increments of £40 and £45 to £1,165 per annum, plus "London Weighting" allowance. Previous local government experience is not essential.

Forms of application and conditions of appointment are obtainable from the undersigned to whom completed forms must be returned by 14th May, 1960. The Council may be prepared to assist in the provision of housing accommodation. Canvassing will disqualify.

ARTHUR GOLDFINCH,
Town Clerk.

Council Offices,
Bexleyheath,
Kent.

CORPORATION OF MANCHESTER MANCHESTER TOWN CLERK'S DEPARTMENT

TWO CONVEYANCING ASSISTANTS (unadmitted) required in the Conveyancing and Contracts Section of the Town Clerk's Dept. Salaries, one in the scale £880 rising to £1,065 and the other £765 rising to £880 per annum. Local Government experience is not essential but experience in chief rents is desired. Particulars of age, education, qualifications and experience to Town Clerk, Town Hall, Manchester, 2, by 9th May, 1960.

COUNTY BOROUGH OF GREAT YARMOUTH

Vacancies exist for the following appointments:—

(1) ASSISTANT SOLICITOR.—A.P.T. IV £1,065-£1,220 per annum according to experience. Housing accommodation available. Removal expenses on approved scale. Previous Local Government experience desirable but not essential.

(2) CONVEYANCING CLERK.—A.P.T. II £765-£880 per annum according to experience. Local Government experience not essential.

Applications by letter, giving details and including names of two referees, must reach the undersigned not later than 5th May, 1960. Canvassing disqualifies.

FARRA CONWAY,
Town Clerk.

Town Hall,
Great Yarmouth.

URBAN DISTRICT OF RICKMANSWORTH

DEPUTY CLERK OF THE COUNCIL

Solicitors are invited to apply for this appointment. While some knowledge of local government would be useful, the Council are quite prepared to entertain applications from Solicitors in private practice. Salary £1,295 rising to £1,450 by three annual increments; and a house is available, if desired. Any person interested is requested to write to the undersigned for further particulars of the appointment, the Urban District generally, and as to making application for the post.

C. G. RANSOME WILLIAMS,
Clerk of the Council.

Council Offices,
Rickmansworth,
Herts.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

Notice is hereby given that the REGISTER OF MEMBERS of the Society will be CLOSED from the 11th May to 24th May, 1960, both days inclusive, for Transfers and Dividend Mandates.

By Order of the Board.

C. MONT,
Secretary.

Oyez House,
Brems Buildings,
Fetter Lane,
London, E.C.4.

continued on p. 22

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Classified Advertisements



continued from p. xix

APPOINTMENTS VACANT

BIRMINGHAM Solicitors with large conveyancing and general practice require experienced Assistant (admitted or unadmitted) capable of working entirely without supervision. Please write stating age, full details of experience and salary required.—Box 6589, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

OUTSTANDING Conveyancer (admitted or unadmitted) required by large firm of City Solicitors, take charge important conveyancing. Top salary and prospects for right man. Pension Fund; lunch vouchers; 4 weeks' holiday; no Saturdays.—Box 6590, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CHIEF ASSISTANT SOLICITOR

Applications are invited from Solicitors, aged 28 to 36 years, for the post of Chief Assistant to the Solicitor of a national Building Society. The salary will be progressive, commencing at £1,250 to £1,750 per annum, according to age and experience. Applicants must be sound conveyancers, able to take charge of a considerable volume of work with little supervision, and willing to accept responsibility. This is an excellent opportunity for an ambitious man.

Removal expenses up to £50 will be paid and holiday arrangements will be honoured. A contributory pension scheme (which includes provision for widow and dependent children) is in operation.

Applications, endorsed "Chief Assistant," giving particulars of age, education and experience, should reach me not later than Tuesday, 17th May.

K. F. SOLLOWAY,
Welford House,
Welford Place,
Leicester.

EXPERIENCED Manager (admitted or unadmitted) required by City Solicitors exclusively for Company and Commercial work involving substantial responsibility. First class man required and first class salary paid. Prospects. Pension Fund; lunch vouchers; 4 weeks holiday; no Saturdays.—Box No. 6591, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITOR (30-35) with several years' commercial experience of Trade Marks, Insurances and General Commercial matters, required by Pharmaceutical Manufacturers to take charge of their Legal Department. Initial appointment London, W.1, but early removal envisaged to Company's new administrative headquarters, Stoke Poges, Bucks. Salary £1,250/£1,750 p.a. dependent on age and experience. Contributory Pension Scheme.—Apply giving full details of education, experience and past employment to The Financial Director, Box 6592, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

A WEST SURREY old-established firm carrying on general practice require recently qualified Solicitor. Salary £850 to £1,200 according to experience. Write with full details.—Box 6599, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

BOND, PEARCE & CO., 1 St. Lawrence Road, Plymouth, require experienced unadmitted Manager able to deal with most types of Non-Contentious work. Commencing salary depends upon age and experience. Pension scheme and help given with housing.

WESTON-SUPER-MARE. — Experienced unadmitted Conveyancing and Probate Clerk required. Reply stating age, experience and salary required.—John Hodge & Co., 27-31 Boulevard, Weston-super-Mare.

WATFORD.—Old-established firm require Assistant Solicitor or Conveyancing Clerk. Write stating age, education, experience, salary required.—Box 6593, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PEMBROKESHIRE Solicitors require admitted or unadmitted Assistant. Own typing an advantage. Salary £1,000, with prospects.—Box 6594, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS.—Old-established Nottingham firm require keen young qualified Assistant (Public School), mainly conveyancing, probate and general work.—Box 6595, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk under 30 required by London Solicitors for estate and general conveyancing. Good salary and prospects. L.V.'s. No Saturdays.—Box 6596, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

YOUNG Conveyancing Clerk required for office, with wide general practice in pleasant Midlands market town. Supervision available initially but desired that applicant should progress when practicable to working entirely on own. Salary according to age and experience. Holiday arrangements honoured.—Box 6597, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CHELTENHAM.—Admitted or unadmitted Assistant required in small expanding general practice. Please give full details and salary required.—Box 6598, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SURREY Solicitors practising in Borough of Sutton & Cheam have vacancy for Unadmitted Clerk (male or female) having not less than five years' practical experience in general work but particularly Conveyancing and Probate. Excellent opportunities and prospects for one anxious to progress and who aspires eventually to a position of responsibility involving the control of matters subject only to guidance on points of an unusual nature or of difficulty.—Box 6600, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS with established practices in London and Surrey have vacancy for Assistant Solicitor of 3-5 years' standing who has had all-round experience particularly in conveyancing and probate work. Excellent opportunities for applicant who is desirous and capable of undertaking control of matters and a position of responsibility, subject only to slight supervision and guidance where necessary.—Box 6601, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY of London Solicitors require Conveyancing Solicitor of first-class ability and experience. Remuneration will be fully commensurate with the high qualifications required. Write with details, age and experience to Box 218 Reynells, 44 Chancery Lane, W.C.2.

MID-WALES SPA.—Vacancy for retired Solicitor whole or part-time. Also locum tenens.—Box 6478, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

YEOMAN CREDIT LIMITED LEGAL ASSISTANT

There is an immediate vacancy for an assistant in the Legal Department at the Company's Head Office at Brentford. Applicant should have considerable experience of Court Procedure and sound grasp of Common Law. Knowledge of Hire Purchase an advantage. Commencing salary in the region of £1,000 per annum. Excellent working conditions, staff restaurant and contributory pension scheme.

Apply: Office Manager, Yeoman House, Kew Bridge, Brentford, Middlesex.

EXPERIENCED unadmitted Clerk required to understudy Managing Clerk approaching retirement of branch office in S.W. suburb of London of old-established firm with large practice. Mainly conveyancing and probate. Excellent opportunities to applicant willing and capable of accepting progressively increasing measure of responsibility.—Box 6602, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required to take over and develop litigation in busy conveyancing practice Norfolk coast; good prospects to capable and efficient advocate. Please write stating age, experience and salary required.—Box 6603, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WIRRAL Solicitor requires an enthusiastic assistant Solicitor or unadmitted Clerk, mainly conveyancing. Please state age, experience and salary required. Good prospects as expanding Practice.—Box 6608, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY Solicitors require capable Conveyancing Managing Clerk. Salary in region of £1,250/£1,500 dependent upon ability, five-day week, three weeks holiday (this year's holiday commitments honoured). Applicants should not be frightened of hard work and must be able to interview Clients. The position offers scope in a progressive atmosphere.—Box 6609, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WESTMINSTER solicitors require assistant solicitor with two years experience or less for Litigation work. Salary according to experience.—Box 6615, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

LEADING firm of Birmingham solicitors are prepared (subject to trial) to admit to profit-sharing partnership a litigation partner. Applications invited only from persons of first-class ability, experience, integrity and connections.—Box 6611, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

continued on p. xxi

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Classified Advertisements

continued from p. xv

APPOINTMENTS VACANT—continued

SURREY.—Managing Clerk, principally Conveyancing and Probate, little Common Law, required at once. House if required. Please state salary.—Box 6523, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

READING.—Solicitors with practices in two other towns are now opening new offices in Reading. Solicitor required to take sole charge and build up practice. This is a long-term project and there is every prospect of partnership for the right man. One with three or four years' experience most suitable, but all applications considered.—Box 6567, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

YOUNG Assistant Solicitor required by large Industrial Bankers at their Head Office in London. Sound knowledge of conveyancing and general drafting essential. Commencing salary commensurate with age and experience. Pension and bonus schemes. Please write giving full details of age, experience and salary required to Box S.J. 127 c/o 191, Gresham House, E.C.2.

WESTMIDLANDS.—Conveyancing assistant (admitted or unadmitted) required for small general practice; opportunities for advocacy and litigation, if desired; progressive post with excellent prospects; salary approximately £1,000 per year.—Box 6412, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ENERGETIC Solicitor willing to accept responsibility required to manage East London general practice. Suitable arrangements made for existing connection. Excellent opportunity and prospects.—Box 6460, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

S.E. LONDON solicitors require conveyancing and probate clerk with good knowledge of land registry procedure: experience of county court work preferred: pension scheme: write stating age: education: experience: salary required.—Box 6547, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ILFORD Solicitors require Senior Shorthand Typist with knowledge of conveyancing. Salary according to age and experience. Would suit experienced person prepared to accept responsibility under supervision.—Reply Box 6580, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ISLE OF WIGHT Solicitors require conveyancing clerk able to handle considerable volume of work. Please write with age, experience and salary required.—Box 6579, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITOR required for London suburban conveyancing practice—must be hard worker and capable of acting independently—good prospects of partnership.—Box 6354, Solicitors' Journal, Oyez House, Brems Buildings, E.C.4.

MIDLANDS.—Young Solicitor, preferably with some experience in advocacy and common law required by old-established firm: prospects of partnership: state age and experience.—Box 6566, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY solicitors require experienced conveyancing clerk: hours 9.30—5, no Saturdays; pension scheme. Please state age, experience and salary required.—Box 6319, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCER (solicitor or unadmitted managing clerk) required by Lincoln's Inn firm for their London south-west suburban branch: good prospects for advancement; commencing salary £1,250; please state age and experience.—Box 6355, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk urgently required for West End Office. Must be capable of handling substantial volume, particularly Third Party claims, and be well experienced. Remuneration of secondary importance to advertisers. Holidays honoured.—Full details to Box 6581, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PROBATE, Trust and Conveyancing Assistant (male or female) required for Senior Partner in West Country town: knowledge of typing and possibly shorthand an advantage but not essential; aged 21-40; speed, accuracy and intelligence and a good education of greater importance than experience; a permanent and progressive position of great interest and possibilities.—Please write with details of age and experience to Box 6582, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

EXPERIENCED general clerk required in Southern England office to take charge of office organisation, equipment, supervision of Junior Personnel, and of costs, deeds, documents and photography clerks, and general conduct of office on modern business basis: re-organisation of Filing Systems the most urgent duty; some knowledge of costs and accounts and tax an advantage and also ability to help in other departments in an emergency; a substantial and progressive salary will be paid to a man able to re-organise with minimum of unpleasantness.—Please write details of age, experience and education to Box 6583, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MATLOCK.—Assistant solicitor preferably 28-35 to take charge of Branch office under slight supervision. General country practice—mainly Conveyancing and Probate. Prospects of partnership after trial period. Salary dependent on experience.—Box 6584, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ELTHAM.—Conveyancing Clerk (25-40) required in busy practice. Every opportunity given. Good salary according to age and experience. Applicant should have had experience with firm of standing.—Please write: The Principal, Edmund Hemming and Co., 99 High Street, Eltham, S.E.9.

£850 OFFERED to newly qualified Solicitor for a position with a firm of Solicitors carrying on a General Practice in the North Notts area. Salary reviewed every six months.—Box 6565, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS require general clerk with experience.—Apply Harding & Barnett, 14 New Street, Leicester.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley: willing to undertake advocacy.—Box 6396, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

EXPERIENCED qualified conveyancer will assist over-burdened practitioners by investigating titles and drafting deeds on regular or intermittent basis.—Write in first instance Box 6585, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MANAGING Clerk (unadmitted), conveyancing, probate, trusts, desires permanent post in old-established office preferably West Midlands or Birmingham, where an experienced conscientious man will be appreciated and remunerated accordingly. Accustomed interviewing and acting instructions to completion without supervision (52). Please state salary offered.—Box 6604, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

NOVEMBER Finalist (Hons.), aged 26, public school, Cambridge graduate, at present working in industry, seeks position as an assistant with firm of Solicitors in Preston area.—Box 6605, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MANAGING Clerk (unadmitted) possessing first-class conveyancing experience with working knowledge of trust and company work, seeks change to congenial office in London or Metropolitan Surrey offering permanent senior position and good salary.—Box 6607, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

HONOURS Graduate, aged 22, seeks articles in London area. Salary required; available immediately.—Box 6610, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PRACTICES AND PARTNERSHIPS

WESTMINSTER Solicitors wish to contact elderly Solicitor with a view to take over of practice or would acquire practice from Executors.—Box 6573, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS' wish to acquire small or medium size general practice in West Essex area.—Box 6588, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITOR, Commissioner, 27, admitted 1954 requires partnership/succession North/East London or Northern/Eastern suburbs/home counties. Extensive conveyancing and probate experience, some litigation, including simple advocacy. Some capital.—Box 6612, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITOR seeks to purchase practice in London or North West Suburbs.—Box 6613, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PREMISES, OFFICES, ETC.

LAW COURTS—TEMPLE

OFFICE suite in modern prestige block available. Suitable new practice or small existing practice to be developed.—Box 6606, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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SOLICITOR requires office in North West Suburbs of London.—Box 6614, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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WE offer a specialised service re mortgage advances on Shop Properties, Factories and Houses over £10,000. Sums also available for Building and Industrial development.—MILLER SMITH AND PARTNERS, 139 Park Lane, W.1. Tel.: MAYfair 7081-4.

continued on p. xxii

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★ Classified Advertisements ★

continued from p. xxi

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